

No. 2596

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
Appellant,
vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME II.

(Pages 289 to 640, Inclusive.)

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

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(Testimony of W. F. Swan.)

Q. Well, I mean your connection with the company. Now, you testified that you didn't interfere with—I will withdraw that—you testified that in 1904 you saw some one on or near this land unloading some scows on the beach?

A. Yes, I did testify to that.

Q. Was it between the Chief Johnson house, on the beach line in front—between the Chief Johnson house and the old Murray and Carroll wharf, that you saw these scows?

A. I couldn't tell you in regard to that.

Q. Are you able to say now whose scows they were? A. No, sir.

Q. Did you see any scows unloading any lumber in 1903 at that place?

A. No, I don't remember.

Q. I think you said you never saw Mr. James on the ground there?

A. I don't think I did; that is, I don't remember that I did. It is possible that I did—it has been eight years—but I don't remember that I did.

Q. Now, I think you testified that you didn't pay much attention to that piece of ground down there, did you not? A. That is what I said, yes.

Q. Is that what you mean?

A. That is what I mean.

Q. Now, you also testified that you never interfered with anyone unless they were putting permanent structures on the ground?

A. That is what I testified to, yes, sir.

Q. And the reason you didn't interfere with any-

(Testimony of W. F. Swan.)

body on this land [269—229] in question was because you supposed that that was the gridiron that had originally been put on there under this lease?

A. Yes.

Q. That lease called for six months, did it not?

A. Yes, sir.

Q. Was that lease renewed?

A. Not to my knowledge.

Q. Then if anyone was on there using that structure after the first of January, 1904, that would be their using a permanent structure without the permission of the company, wouldn't that?

A. That would be, unless they had permission of the company.

Q. Did anybody have permission from the company?

The COURT.—1904?

Mr. GUNNISON.—I didn't mean 1904; I meant 1906—pardon me.

A. Well, I think, of course, it was only a verbal permit, so that I don't know—

Q. There was no one had a written lease?

A. No; no one with a written lease.

Q. You say in October, 1906, the street was built, did you?

A. That is what the records show here; I suppose that is definite enough.

Q. I ask that with reference—you said in 1906 there were no permanent occupants of the ground?

A. No permanent occupants of the ground at any time during the time I was here.

(Testimony of W. F. Swan.)

Q. Will you explain what you mean by permanent occupants?

A. People that would go on there and stay there.

Q. Under permission of the company for permanent—would you call the Davidson lease permanent occupation?

A. Permanent as long as he stayed there. [270—230]

Q. Then you didn't call anybody else—that was the only permanent, to your knowledge the only permanent occupant of the ground?

A. Yes, sir, that was the only one I know of.

Q. You say that no one ever claimed this ground in question during that time? A. Never did.

Q. Will you explain what you mean by no one ever claimed the ground?

A. I mean came to me personally and said they had an interest in the property and objected to structures being put on there by permission of the company. The gridiron was put on there in the first place.

Q. And your meaning is that no one had ever claimed that property, is that no one had ever gone to you as agent of the Pacific Coast Co. and said to you that he claimed that ground—that he, the person coming to you, claimed the ground?

A. I mean that I never heard, in any way, that anybody claimed that, either by personal talk or through someone else.

Mr. BAYLESS.—Q. Outside of the Pacific Coast Co.? A. Yes.

Q. (By Mr. GUNNISON.) And you didn't

(Testimony of W. F. Swan.)

know that the gridiron that was on there from 1906 or 1907 was owned or claimed or used by George E. James?

A. No, I didn't know it belonged to him.

Q. You were the agent of the Pacific Coast Co.?

A. Yes, sir, I was the agent and didn't know that belonged to James.

Q. But you know it was there and used?

A. Yes; I told you before that I thought it was the same gridiron that was originally built there.

[271—231]

Q. But you didn't inquire about it?

A. I didn't inquire at all.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. You thought this gridiron which was used by Mr. James was the same gridiron which Mr. Davidson had erected? A. That was my impression.

Q. And that was used for the purposes of the Perseverance Company? A. That is it.

Q. The same purposes for which the first gridiron had been constructed?

Mr. GUNNISON.—We object to that question as leading and not proper cross-examination.

The COURT.—This is not cross-examination, but is redirect examination. It is a repetition. That was drawn out by you, not by Mr. Bayless. It was brought out on your cross-examination. You are simply wasting time.

Q. (By Mr. BAYLESS.) Mr. Swan, you said

(Testimony of W. F. Swan.)

something about a verbal permit; just explain what you meant—was that with reference to Mr. James?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial, and not proper redirect. We didn't go into it at all. And that, also, it is not the best evidence.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No, that was in reference to the Perseverance Company, in regard to handling lumber over their property—property of the Pacific Coast Co. [272—232]

Q. (By Mr. BAYLESS.) Did I understand you to say it was your impression that Mr. James was occupying this ground by permission from the company?

A. No, I didn't say that. I don't know that Mr. James ever asked for permission.

Q. I understood you to say that it was your impression that Mr. James had verbal permission from the company?

A. No, I didn't say that. My impression was that the arrangement with the Perseverance was being carried on. I should certainly have stopped it being carried on, had I known it wasn't.

Mr. BAYLESS.—I have just one more question in examination in chief.

Recross-examination.

(By Mr. GUNNISON.)

Q. You say there was a verbal permit to the Perseverance Company to handle freight over the

(Testimony of W. F. Swan.)

Pacific Coast Company's property—did that refer to any of the Pacific Coast Company's property?

A. It didn't and didn't refer to freight, and I didn't say it was passing over the wharf. In consideration of the other business they were doing with us—

Q. What part of the beach?

A. Down where the gridiron was. That was why this lease was given to Davidson to cover that.

Q. When was that verbal permission given?

A. About the time the least was made.

Q. And that wasn't given—was that for any particular extent of time or period of time?

A. No, it ran on indefinitely. [273—233]

Q. Then it wasn't for any particular period of time? A. No.

Q. Was that lease made to take the place of that verbal agreement? A. No, sir.

Q. To whom, if you know, was Davidson furnishing lumber at that time and over that wharf?

A. I think to the Joshua-Hendy Machine Company of San Francisco, who had a contract with the Perseverance for the construction of the mills up in the Basin. This is only hearsay with me—the impression I got from Mr. Mitchell, Superintendent of the Perseverance, who made a request on us to handle it over there.

Q. This lease was made in pursuance of your permission to the Perseverance Company to handle lumber over the beach?

(Testimony of W. F. Swan.)

A. Yes, sir, in consideration that they would give us other business.

Q. There was no other lease given to any other person for that tide land?

A. I don't think it was ever leased to anyone else; I don't remember if it was.

Q. And the only oral permission was to the company?

A. Perseverance, Joshua-Hendy, Wrangell Mills, and possibly Mr. James—I don't know whether he was given permission or not.

Q. You don't remember whether you gave Mr. James permission or not?

A. No, I don't remember.

Q. You thought the terms of that were being carried out by Mr. James—what made you think that?

A. Well, from what the Perseverance people—the impression they gave me of buying lumber from Mr. James.

Q. Then it wasn't with reference to anything you saw of this [274—234] piece of ground that led you to that opinion, was it? A. How is that?

Q. You said, as I understood you, that you never saw Mr. James on the ground and you didn't know the gridiron was claimed by Mr. James and you understood he was using it—

A. I think you are right. I don't think I knew.

Q. You said, in response to a question from Mr. Bayless, that you supposed that the occupancy of

(Testimony of W. F. Swan.)

that ground was in pursuance of the agreement or verbal permission?

A. We will cut out Mr. James and we will say the lumber being landed there—or whether it came from Wrangell.

Q. Whatever lumber came over there was handled in pursuance of that agreement?

A. That is what I understood.

Q. And if you hadn't you wouldn't have allowed it?

A. Certainly not, when we were in the wharfage business, unless we had some agreement.

Q. Then you don't mean to say—don't mean to be understood as saying you would stop Mr. James any more than anybody else if you had known how that was going on? A. Why, certainly not.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Mr. Swan, it was the understanding that this arrangement that existed with the Perseverance people or with the Wrangell sawmill receiver was to continue during the construction period at the Perseverance?

Mr. GUNNISON.—We object to what his understanding was. Anything that was said or done in reference to that might be [275—235] admissible.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, it was my impression to handle the construction material for their mills in the Basin coming

(Testimony of W. F. Swan.)

from the sawmills and also that if they built a road up there.

Q. (By Mr. BAYLESS.) And that supplies would be handled at this particular spot?

A. Yes.

Q. And for that reason you didn't stop them?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial.

A. Just what I said before.

Q. (By Mr. BAYLESS.) While you were agent, did the Pacific Coast Company pay the taxes on this particular piece of tide lands as well as the other tide lands contained within the Carroll-Murray wharf site?

The COURT.—Do you want to ask that question on your case in chief?

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We object to the question on the ground that it is too indefinite, incompetent, immaterial and irrelevant, as to what other property he paid taxes on, and that the only evidence that would be admissible here would be as to taxes paid on this particular piece.

The COURT.—Read the question.

(Q. read by stenographer:) While you were agent, did the Pacific Coast Company pay the taxes on this particular piece of tide lands as well as the other tide lands contained within the Carroll-Murray wharf site?

The COURT.—Objection overruled. [276—236]

Mr. GUNNISON.—Exception.

(Testimony of W. F. Swan.)

A. (By the WITNESS.) Yes.

Mr. BAYLESS.—That is all.

The COURT.—Any cross-examination?

Mr. GUNNISON.—No.

(Witness excused.)

(Whereupon Court adjourned until 9:30 A. M., Monday, July 20, 1914, when Court reconvened pursuant to adjournment.) [277—237]

Mr. GUNNISON.—Mr. Webster was to have been here at 9:30 for cross-examination and I told him so Saturday night, and I suppose he misapprehended the hour—so the telephone operator said—and they are looking for him. In the meantime, I will offer two depositions—depositions of Mr. Harper and Mr. Mitchell. I would offer the stipulation entered into between counsel whereby it was stipulated that John R. Mitchell, of Denver, Colorado, might be called and examined before a commissioner as a witness for the defendant, and that Alice Quinn, a Notary Public for the County of Denver, in Colorado, might be designated as the person to take the deposition, and then we offer the deposition of John R. Mitchell—

The COURT.—It has been filed, has been opened and published in the case?

Mr. GUNNISON.—Yes.

The COURT.—Any objection?

Mr. BAYLESS.—I would like a moment to examine this deposition.

Mr. GUNNISON.—At the same time, in order that counsel may examine both, we offer the stipu-

(Testimony of W. F. Swan.)

lation with reference to the testimony of Theodore A. Harper, of Dundee, Oregon, and the deposition on direct and cross-interrogatories of Mr. Harper taken before the commissioner designated in the stipulation.

The COURT.—That has been filed?

Mr. GUNNISON.—Has been filed and published in due course.

Mr. BAYLESS.—We have no objection to the introduction of the two stipulations. We have no objection to either deposition.

Mr. GUNNISON.—Mr. Scott, the witness whom we will call in order to save the Court's time—it is a little bit out of order—will be here in just a moment. [278—238]

The COURT.—I understood that you wanted to bring something to the attention of the Court, Mr. Bayless.

Mr. BAYLESS.—There is just this, your Honor: In the examination of Mr. Swan, certain questions which I asked him on direct examination I understand were questions which I should have asked Mr. Swan in my case in chief; that is to say, that he was properly a witness for the plaintiff in my case in chief, and I will say that I have two or three more witnesses who will testify to circumstances of a similar nature that Mr. Swan was asked to testify to, and, if I have misapprehended the tactics in putting in my case, in order to get all these matters before the Court, I would ask the privilege of reopening my case in chief for that purpose. I will say that I con-

(Testimony of W. F. Swan.)

sulted with my partner about the way of putting in my evidence and also Mr. Stratton, the company's counsel in Seattle, and it was agreed that I put it in in this manner. If I am all wrong about it, I would ask the privilege of changing my tactics in order that the Court may get the facts.

The COURT.—When you were given permission Saturday to interrogate Mr. Swan in chief, you asked him only one question in chief, and that was about the taxes. Do you mean that you have some other testimony about the payment of taxes?

Mr. BAYLESS.—Yes, about the payment of taxes.

The COURT.—Just about that alone?

Mr. BAYLESS.—And certain other circumstances. I will say this, that Judge Gunnison developed a number of things on cross-examination which made it unnecessary for me to make Mr. Swan a witness in my case in chief; that is the reason I asked him no further questions.

The COURT.—You make a statement of the things you [279—239] want to prove by additional witnesses in a concise form, then, if there is something different, I will pass on it, but I cannot reopen the case generally. But if you will tell me your reasons, I will consider the matter of reopening the case.

Mr. BAYLESS.—I would like to do that, your Honor.

The COURT.—If it is going to be done, I think it should be done before the defendant proceeds with his case, because he may want to answer those things by witnesses he has on hand. Of course, I don't say

(Testimony of W. F. Swan.)

that I am going to allow you to do it, but, if you want that privilege—if it is going to be granted at all, it should be granted now, so that the defendant may know what he is going to meet.

Mr. BAYLESS.—All right, sir, I will make a statement. If the Court please, I expect to show that during the time of Mr. James' alleged occupation from 1900 down to the institution of this suit, that the company exercised supervision over this property, had its agents keep squatters off and prevent any one from getting a foothold with the exception of Mr. James, and I expect to explain how Mr. James was allowed to remain there, and I would like to show the acts of ownership exercised by the company during the period Mr. James was on the property. I apprehended that that was properly rebuttal testimony. If your Honor thinks it is testimony which would properly be presented in my case in chief, then I would ask that privilege.

The COURT.—Anything you did in reference to Mr. James' occupation would be proper rebuttal. Anything you did to warn Mr. James off, or to show that he was occupying the ground by permission, is proper rebuttal, so you wouldn't need to reopen your case for that purpose. Of course, it is proper [280—240] rebuttal to rebut anything the defendant brings out, but acts of ownership with reference to other people generally would be part of your case in chief.

Mr. BAYLESS.—Then your Honor would hold that it would be proper for us to show in chief acts

(Testimony of W. F. Swan.)

of ownership during the time he has alleged to be in possession?

The COURT.—If it has no reference to Mr. James at all, that would be in chief, but if it has reference to Mr. James, it would be rebuttal.

Mr. BAYLESS.—The testimony I would offer would have no especial reference to Mr. James.

The COURT.—Well now, Judge Gunnison, have you any objection to counsel putting on witnesses and reopening his case?

Mr. GUNNISON.—I realize the matter of reopening the case in chief is within the sound discretion of the Court, but we think it is now too late to reopen the case in chief and object to it for that reason. It has been reopened once or twice and now they ask to reopen it the third time. We think it is for another purpose than stated before and think it is now too late to do it.

The COURT.—How would it injure you in your case in any way?

Mr. GUNNISON.—Until the testimony should come out—the statement of counsel is so indefinite as to general acts—it might be that we might want to meet it in some way that we couldn't meet it by—

The COURT.—Yes, but that might have been the case if it had been produced in the first place. What I mean is, how are you any worse off now than if it had been developed in chief? You haven't developed anything that I know of— [281—241] in the status of affairs—so far as your opportunity and

(Testimony of W. F. Swan.)

your knowledge of your own case and what to meet is concerned.

Mr. GUNNISON.—Of course, it is true we have assumed from the testimony—rather, instead of assumed, we moved to dismiss the cause, plaintiff's case, and we have rested on that so far as the plaintiff's case is concerned, and have proceeded on our case—with our own affirmative case. We haven't offered any evidence back of 1900 and haven't attempted to rebut anything that has been put in by the plaintiff on any question of that kind.

The COURT.—That is all true, but the witnesses are right here in town. You have already proceeded to the extent, if I remember, of examining Mr. Kohn—

Mr. GUNNISON.—Mr. Roberts, Mr. Webster—

The COURT.—Well, Mr. Kohn and Mr. Roberts. Mr. Webster has not finished yet. So I cannot see that it would injure you in anyway whatsoever.

Mr. GUNNISON.—I can't say on the statement of counsel—I don't know what he wants to prove. .

The COURT.—Well, I don't know exactly myself, but I will allow him to reopen his case to a certain extent, but I think he should open it now.

Mr. BAYLESS.—Very well, sir.

The COURT.—When I say "now," I mean the defendant should not be compelled to go on with his case until you finish that point.

Mr. BAYLESS.—Very well, I will agree with that. Will you give us a little time—if your Honor will give me five minutes to telephone, I have one

(Testimony of W. F. Swan.)

witness we can put on now.

Mr. GUNNISON.—We had asked Mr. Scott, who has been engaged with a gang of men, to come up, and while he is absent the work practically stops, and we would like to call him [282—242] and get through with him.

The COURT.—You don't think you would need Mr. Scott in rebuttal of anything Mr. Bayless would bring out?

Mr. GUNNISON.—I might want to call him later.

The COURT.—Very well, you may put him on the stand and later on recall him if such testimony is drawn out by Mr. Bayless' witnesses that you may want to put him on again.

Mr. BAYLESS.—What shall we do with reference to Mr. Webster's examination?

The COURT.—Of course, that will be deferred till later.. [283—243]

[Testimony of John R. Scott, for Defendant.]

JOHN R. SCOTT, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Scott, will you state your name?

A. John R. Scott.

Q. And your occupation? A. Carpenter.

Q. Where did you live in 1905, at what place?

A. Here in Juneau.

Q. Do you know the piece of waterfront—I will withdraw that—do you know the dock known as—

(Testimony of John R. Scott.)

the place on the beach along Franklin Street known as the old Carroll & Murray wharf? A. I do.

Q. Do you know the piece of ground in controversy in this suit on which Mr. James' gridiron stands?

A. I do.

Q. Did you know that ground in the year 1905?

A. I did.

Q. Were you engaged in any work on that ground in that year? A. I built a little wharf there.

Q. Where, with reference to the gridiron as it now stands and the street?

A. Very near in front of it.

Q. In front of what? A. Of the gridiron.

Q. By in front, you mean between the gridiron and the street, or between the gridiron and deep water?

A. Gridiron and the street. [284—244]

Q. While you were there—what time in the year was that as near as you can recollect?

A. I believe I started work there the last day of May.

Q. And while you were there, did you see Mr. James on the ground? A. I did.

Q. Did you see him—do you know his scows?

A. Why, I know he had a scow.

Q. Did you see him—his scows land there and lumber discharged over this ground?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Well, it is, of course.

Q. (By Mr. GUNNISON.) What do you say with reference to lumber—to the landing of scows and the discharging of lumber over this tract, if any-

(Testimony of John R. Scott.)

thing, during the time you were engaged in work there?

A. There was some scows of lumber that was anchored there and the teams hauled it away.

Q. Whose scows were they, if you know?

A. Why, I supposed they were Mr. James'.

Q. Was Mr. James there at the time that any of them were landed and discharged?

A. Yes, he was there sometimes; I don't say he was all the time, but he was there sometimes.

Q. Now, while you were there engaged in the construction of this platform, or you call it a wharf, did you see any structure on there that was used by Mr. James, any other structure on this waterfront, this particular piece of waterfront?

A. Why, he had something there to rest the ends of his scow on; I think two benches or something like that.

Q. On this same piece of waterfront?

A. Well, it wasn't direct in front of that; it was a little at one side. [285—245]

Q. On which he landed his scow and from which he discharged it? A. Yes.

Q. How many years have you lived here, Mr. Scott—were you here in 1900?

A. I was; I came here in '98.

Q. Well, from the year 1900 down to the summer of 1912, how much of the time were you in Juneau?

A. All of the time in the summer months.

Q. What was your occupation during that time?

(Testimony of John R. Scott.)

A. I followed the business of carpenter and contractor.

Q. During that time, from 1900 up, from and including 1900 to the month of August, 1913, what do you say as to whether or not Mr. James used this particular piece of waterfront in controversy for the purpose of landing scows and discharging lumber over it?

A. Why, I have seen his scows there occasionally. I never saw anyone else using it.

Q. Now, when you say occasionally, you mean when you have been down there you have seen his scows on the ground, is that what you mean?

A. Yes.

Mr. BAYLESS.—We object to the question as leading and move to strike the answer.

The COURT.—Yes, it is quite leading, Judge Gunnison.

Mr. BAYLESS.—Does your Honor strike the answer?

The COURT.—No, I didn't strike the answer.

Mr. GUNNISON.—I will endeavor not to lead the witness.

Q. Did you see Mr. James use that small structure on which you say he rested the ends of his scows while you were down there? [286—246]

Mr. BAYLESS.—We object to that as suggestive.

Q. (By Mr. GUNNISON.) Did you build one of the—I will withdraw that—state, if you know, how many approaches there are to the present gridiron on this ground? A. Two.

(Testimony of John R. Scott.)

Q. Did you have anything to do with the construction of either of those? A. I built one.

Q. Which? A. The one toward the sawmill.

Q. The one towards the sawmill—in what year, Mr. Scott, approximately?

A. 1912, I think it was.

Q. Who paid you for it? A. Mr. James.

Q. Do you know how long that platform which you built stood? A. No, I don't.

Q. Do you know whether or not it was standing in the spring of 1906?

A. I don't think all of it was there.

Q. Well, was it in condition to be used?

A. No, I wouldn't say it was.

Q. Are you able to say whether or not the present gridiron is a reconstruction of that platform or whether it is a different structure?

A. It is a different structure.

Q. Are you able to state whether or not it has in it any of the timbers or whether it stands upon the foundation of the other structure, the one you built?

A. It has no timber in it that was in the structure that I built.

Q. Either foundation or substructure. [287—247] A. Nothing whatever.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Did you build both of these gridirons?

A. I didn't build either one of them.

Q. You did not build either one of them?

(Testimony of John R. Scott.)

A. I didn't build either one of them.

Q. What did you have to do with the old gridiron?

A. I didn't have anything to do with it.

Q. You call it a little wharf?

A. I call it a wharf.

Q. Platform? A. Platform.

Q. Who built that? A. I built that.

Q. You didn't build this other gridiron?

A. No, I had nothing to do with it.

Q. Do you know who did build it? A. No.

Q. Did you see it being built? A. No.

Q. Have you examined it recently?

A. Not particularly, no.

Q. How big was that old platform?

A. Well, I can't say what the dimensions was.

Mr. GUNNISON.—We object to this as not proper cross-examination. We didn't go into the construction of that at all. [288—248]

The COURT.—You asked him about it.

Mr. GUNNISON.—I asked him if he constructed it merely for the purpose of laying a foundation.

The COURT.—You asked him about it—on direct examination you had him locate it. Now, on cross-examination, certainly he can be asked a little more about it to ascertain whether he knows about it.

Q. (By Mr. BAYLESS.) How big was that old platform, Mr. Scott?

A. Why, I couldn't say as to the exact dimensions. I had four rows of piles one way and five the other, with caps across them.

Q. How long would that make it?

(Testimony of John R. Scott.)

A. Make it approximately forty feet perhaps.

Q. And how wide?

A. Twenty-four or thirty, somewheres around that, I don't remember.

A. Well, now, just describe this old platform to the Court.

The COURT.—Well, now, Mr. Bayless, I allowed you to go far enough to show what platform he was talking about, but now you are going into the details of the construction of the platform, which was introduced merely for the purpose of fixing a location—the location of this gridiron. I think the objection would be well taken that it is not cross-examination.

Q. (By Mr. BAYLESS.) Mr. Scott, was there any other structure on the ground when you built that platform?

A. Not on that particular spot, no.

Q. Whom did you build that gridiron or that old platform for?

Mr. GUNNISON.—We object to that as not proper cross-examination—part of their rebuttal, your Honor.

The COURT.—I don't know whether he testified to who he built it for on direct examination or not.

Mr. GUNNISON.—No, sir, I didn't ask him about that.

The COURT.—I will allow you to ask him that question. [289—249]

Q. (By Mr. BAYLESS.) Whom did you build that platform for, Mr. Scott? A. Mr. Davidson.

(Testimony of John R. Scott.)

Q. Charles E. Davidson? A. Yes.

Q. Did Mr. James occupy this old platform after you built it? A. Not that I know of.

Q. Do you know who occupied it?

A. The Perseverance people *had there* sometime.

Q. Did you see anyone besides the Perseverance Mining Company, or its agents, using that platform?

A. No.

Q. How long did that platform remain in its position on the ground?

A. Why, that season and part of the winter. I think the ice uprooted the piles, most of them, bent them crooked.

Q. Was it a substantial structure?

A. I wouldn't call it a substantial structure. The piles were set in the ground with the exception of two rows.

Q. Where, with reference to the present gridiron, was the old platform?

A. Very near in front of it.

Q. How close to it in feet would you say it was?

A. It must be very near the outer edge of the bent. It was, I should say, very near the front of the present gridiron.

Q. Very close to it? A. Very close to it.

Q. Was this old platform on the uplands or on the tidelands? A. On the tide.

Q. The tide ebbed and flowed under this platform?

A. It did, yes.

Q. And scows were landed on that platform?

(Testimony of John R. Scott.)

A. No, the scows were landed on the beach and the lumber was piled off onto the platform from the scow.

Q. What did the scows rest on?

A. Rested on the ground.

Q. On the beach? A. On the beach.

Q. There was no structure on the beach, embedded in the beach, for these scows to rest on at that time?

A. No.

The COURT.—Are you talking of the scows before the gridiron was built?

Mr. BAYLESS.—Before Mr. James' gridiron was built.

Q. You spoke, I think, about there being some bents embedded in the beach which were used to rest scows on? A. Yes.

Q. Just describe that to the Court.

A. That was on the lower end toward the sawmill.

Q. How far from the old platform was that structure?

A. Possibly eight or ten feet, something like that, approximately.

Q. Did you ever see scows landing there while the old platform was standing?

A. A scow-load of lumber discharged there while I was building—while I was at work there.

Q. Did you ever see scows landing there and discharging on this platform? A. Yes.

Q. Do you know whose scows they were?

A. No, I don't. The lumber came from the Wrangell sawmill.

Q. And was landed on this structure on the beach

(Testimony of John R. Scott.)

and unloaded onto this old platform?

A. They weren't landed on no structure; there was no structure in front of that platform; they sat in the water until they [291—251] was unloaded or on the beach.

Q. Just what was this old structure which was about eight feet from the old platform?

A. There were some benches put in there to hold the back end of the scow up level when the tide went out.

Q. Well, I don't exactly understand what those benches were or bents—what do you mean by that?

A. I mean—you may call it a gridiron or structure—anything to hold the end of the scow up—piles set in the ground or driven in, with caps across them, probably they were three feet off the ground on one end.

Q. For scows to sit on—acted for the same purpose as this gridiron?

A. Acted for the same purpose, yes.

Q. And that gridiron was about eight feet from the platform you built? A. Something like that.

Q. Did you ever see any lumber from Wrangell laid on this gridiron? A. No.

Q. You did not. Do you know where the Wrangell lumber was landed?

A. It was landed on the platform I built.

Q. Do you know whether or not Mr. James had anything to do with landing any of the Wrangell lumber on this platform? A. No, I don't.

Q. Did you ever see Mr. James on the ground while

(Testimony of John R. Scott.)

any of this lumber was landed on the old platform?

A. What, the Wrangell lumber?

Q. Yes.

A. I don't remember about that. He might have been around and might not; I don't know. [292—252]

Q. Do you remember ever seeing any of Mr. James' agents or employes there while the Wrangell scows were discharging on this old platform?

A. Not that I know of.

Q. Did you ever see Mr. James' scows on the beach in front of this old platform?

The COURT.—At which time?

Mr. BAYLESS.—During any time that the platform was standing.

A. I don't know; I don't remember. I don't know what he would be doing there unless he was unloading lumber off the platform. I don't know—I never saw that.

Q. You never saw Mr. James do that and how long did this old platform stand, Mr. Scott?

A. I don't really know. It was partly demolished the next spring, next summer, early in the spring rather.

Q. Was it used in the summer of 1906 at all do you know? A. Not that I know of.

Q. When was the present gridiron built, do you know? A. I don't know.

Q. You didn't build it? A. No.

Q. You had nothing to do with it? A. No.

Q. Know nothing about it?

(Testimony of John R. Scott.)

A. No; just know it is there.

Q. And the present gridiron stands just a little to the seaward of the old platform? A. Yes.

Q. Were you here while the Perseverance Mill was being constructed—do you know what year it was?

A. I don't recall—I must have been here. I was here before there [293—253] was any Perseverance.

Q. Do you know whether or not the mill was being built in the summer of 1905?

A. I don't remember about that.

Q. Do you know what this lumber from Wrangell was used for.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

A. I don't.

Mr. GUNNISON.—And not proper cross-examination.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Where were you in the summer of 1900, Mr. Scott?

A. I was here in Juneau.

Q. What was your work then?

A. I was working for the Last Chance Company up here in the Basin.

Q. Were you acquainted with this piece of property in dispute at that time?

A. I knew it was there.

Q. Did you have occasion to go down on the spot where Mr. James' gridiron is now, in 1900?

A. I was passing by there to and from the sawmill.

Q. The Jorgenson sawmill?

(Testimony of John R. Scott.)

A. Jorgenson sawmill—I think it was about that time that he built his mill there.

Q. Is there any event which occurred about that time which would fix the date in your mind, Mr. Scott, so that you could tell whether it was actually the summer of 1900 or not?

A. No, I couldn't say for sure.

Q. Well, can you swear positively that you know anything about this property in 1900 or whether or not Mr. James used it in any way in 1900?

The COURT.—How is that cross-examination, Mr. Bayless? [294—254]

Mr. BAYLESS.—As I understood it, on direct examination Mr. Scott testified that from 1900 to August, 1913, Mr. Scott has been here each summer and during that time no one else has occupied that ground except Mr. James.

The COURT.—I remember some testimony to that effect, but I thought he said from 1905.

Mr. GUNNISON.—I did mention back to 1900, summer of 1900.

The COURT.—Very well, proceed with your cross-examination.

A. Mr. James used the ground in 1900. I had occasion to buy lumber from Mr. James in that year.

Q. (By Mr. BAYLESS.) What time in that year? A. In the summer-time some time.

Q. What did you do with the lumber you got?

A. How is that?

Q. How much lumber and what was the kind and what did you use it for?

(Testimony of John R. Scott.)

Mr. GUNNISON.—We object to that as being multifarious.

The COURT.—Objection overruled.

Mr. GUNNISON.—Three questions in one.

The COURT.—Yes, but so intimately and closely connected.

Mr. GUNNISON.—Exception.

A. As to the quantity I couldn't say; the kind, why it was such as people built buildings out of—dimension stuff, some boards, some timber, and scantling used to build a barn, chicken barn, and a fence.

Q. (By Mr. BAYLESS.) Whereabouts, Mr. Scott?

A. On my lot the most of it.

Q. That was in the summer of 1900?

A. In the summer of 1900.

Q. Was the Jorgenson sawmill operating at that time?

A. I don't think it was just then. I don't know; I don't remember. [295—255]

Q. Was the sawmill built at that time?

A. I don't think it was built.

Mr. GUNNISON.—We object to the question on the ground that it is not proper cross-examination, irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) And you say that this lumber was brought over to you in the summer of 1900 in that way?

A. No, I didn't say so.

Q. Brought over from Mr. James' sawmill by Mr. James?

(Testimony of John R. Scott.)

A. No, I landed it there myself. I bought the lumber from James.

Q. And you brought it over in your own scow?

A. How?

Q. How was it brought over from Douglas?

A. I didn't bring it from Douglas. I brought it from Sheep Creek—brought in a raft. You asked me to fix any kind of a point whereby it would be definite that Mr. James occupied that ground. I mentioned that part as a sure instance why I knew he occupied the ground in 1900 and you brought me along about this fence and chicken coop.

Q. Did Mr. James bring this lumber up from Sheep Creek? A. No, I brought it up myself.

Q. And where did you land it?

A. Somewheres about that same place.

Q. Do you know whether it was on the exact spot where the gridiron is now?

A. It might not have been on the exact spot, but it was somewheres near there. That was about the only place a team could get to it.

Q. Can you fix a place with any definiteness?

A. No, I don't suppose I can.

Q. Was there a structure on the beach at that time? A. I don't remember. [296—256]

Q. Do you know whether or not Mr. James had any structure on the beach during the summer of 1900?

A. I don't know whether he did or not.

Q. How much ground did you occupy, Mr. Scott, in unloading your raft in 1900?

A. The size of the raft?

Q. How big was the raft?

(Testimony of John R. Scott.)

A. I don't remember that I measured it. It was large enough to hold the amount of lumber it contained.

Q. How much lumber did it contain?

A. I don't know as to the amount.

Q. Did Mr. James come up with you that time?

A. No.

Q. You bought the lumber at Sheep Creek and brought it up and landed it on the beach? A. Yes.

Q. Did you know whether or not Mr. James claimed that ground there at that time?

A. At that time?

Q. Yes.

A. No, I didn't know anybody claimed it.

Q. Do you know the size of the old Carroll-Murray wharf site property.

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—The size of what?

Mr. BAYLESS.—The old Carroll-Murray wharf property.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Did you see Mr. James occupying the property in controversy in the summer of 1900 except as you have testified?

A. I couldn't say, I don't remember. [297—257]

Q. In 1901, Mr. Scott, where were you?

A. I was working for the Last Chance Company in the Basin.

Q. Were you acquainted with the property in dispute at that time?

(Testimony of John R. Scott.)

A. Same as I was the year before; just knew the ground was there.

Q. Did you know whether anybody occupied that ground in 1901?

A. Only as Mr. James occupied it with bringing lumber over from Douglas.

Q. Did you see Mr. James bring any lumber over from Douglas in 1901? A. Yes.

Q. What time? A. In the summer.

Q. How many times? A. Several times.

Q. One or two, or more than that?

A. Yes, a good many times.

Q. How was this lumber brought over?

A. Brought over in scows.

Q. In scows in 1901. How frequently were you on the beach, on this spot, in the summer of 1901?

A. As I happened to pass along down there.

Q. How frequently did you have occasion to pass down there? A. Not very often.

Q. About how often during the summer?

A. Oh, I don't know how many times during the summer.

Q. Did you see Mr. James landing any lumber over there in the winter of 1901?

A. No, I wasn't down there in the winter.

Q. Well, were you working in town in the summer of 1901? A. I was working in the Basin.

Q. And how frequently did you come to town during that summer from the Basin—how frequently did you come down from the Basin to Juneau during the summer of 1901?

(Testimony of John R. Scott.)

A. I am talking about Gold Creek Basin. I lived here in town and [298—258] worked up in the Basin.

Q. And you worked up in the Basin?

A. In 1900 and 1901 and part of 1902 I was working. I was using lumber at different times from Mr. James' sawmill at Douglas.

Q. Did you have occasion to go down on the beach to get that lumber? A. No, I never did.

Q. What occasion did you have to go down on the property in 1901?

A. Same occasion as any one would.

Q. For business or pleasure?

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial.

Mr. BAYLESS.—Whether he was down there for business or pleasure.

The COURT.—Objection overruled.

A. It might be both.

Q. Did you have any particular reason to observe whether Mr. James was landing lumber there or not?

A. No, I didn't.

Q. How do you recollect that he did?

A. I see him.

Q. You have seen Mr. James himself?

A. I have seen Mr. James himself on the scows there occasionally.

Q. In 1901?

A. I don't know as it was 1901; I know he was there sometimes in 1901.

Q. Have you any way of definitely fixing it so you

(Testimony of John R. Scott.)

can swear positively that it was the year 1901 instead of 1900, or 1902? I am not trying to confuse you—I am merely trying to find out whether you really know whether he was occupying the beach in 1901. If you can swear positively about that, that is all that is necessary.

A. I am not sure as to the year, but I think it was 1901. [299—259]

Q. You wouldn't pretend to swear positively?

A. It was either in 1901 or 1902.

Q. And you merely saw him over there occasionally and occasionally during that summer?

A. It was only occasionally I seen him—I wasn't there, I was busy.

Q. Were you doing any business with Mr. James in 1901? A. Not that I remember of.

Q. Doing any business in 1900?

A. Well, I don't know as 1900; it was 1900 or 1901 that I bought the lumber; I have forgotten what year.

Q. Do you know whether or not Mr. James had any stakes on the beach that would indicate that he claimed a certain tract of ground there?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—I don't see how it is cross-examination.

Q. (By Mr. BAYLESS.) Do you know whether or not these rafts were landed in the exact spot that the gridiron is now, in 1900 or 1901?

A. No, I don't.

(Testimony of John R. Scott.)

Q. Might have been this side or might have been the other side?

A. It might have been, but it couldn't be far away on either side.

Q. Were those rafts always landed in the same spot? A. Pretty much.

Q. Were there any rafts landed there in 1901; rafts of lumber from Douglas?

A. What do you mean by rafts of the lumber—do you mean scows or rafts?

Q. Just rafts.

A. I don't remember as to that, rafts.

Q. You don't know whether or not he landed rafts or scows? A. Not at that time, no. [300—260]

Q. Well, Mr. Scott, in 1903 where were you?

A. I think in 1903 I was working for the city.

Q. Do you know whether or not Mr. James landed any scows or rafts there during that year?

A. Why, I used to see lumber come over there occasionally landed down there somewhere.

Q. In 1903? A. Yes.

Q. Are you sure it was 1903?

A. I am quite sure it was 1903; I was working for the city.

Q. Summer or winter of 1903?

A. Both; mostly in the summer.

Q. Was there any structure on the ground at that time, in 1903? A. I don't know.

Q. How frequently would you say these scows or rafts landed there?

A. Oh, I don't know as to that—whenever I hap-

(Testimony of John R. Scott.)

pened to notice them. In 1903 I was all around the beach there.

Q. Did Mr. James land lumber at any other spot than upon the property in dispute?

A. I don't know; I never saw him.

Q. Did you ever see any one else land on that piece of property? A. No.

Q. Did you ever see any fish boats anchored there?

Mr. GUNNISON.—We object to that as not proper cross-examination—he is talking about anchoring.

Mr. BAYLESS.—Laid up on the beach, I meant.

A. Not on that spot.

Q. Did you ever see any Indian canoes laid up on the beach there?

A. I expect likely Indians and any one else—

The COURT.—Just a moment. Before I had an opportunity [301—261] to rule on that last question another one was asked. Now a question is asked which raises the same question that was in the other and it is not objected to.

Mr. GUNNISON.—I thought your Honor had overruled the objection.

The COURT.—I did not overrule it.

Mr. GUNNISON.—Well, I desire to interpose the same objection.

The COURT.—How is that cross-examination?

Mr. BAYLESS.—Mr. Scott has testified that Mr. James occupied the beach.

The COURT.—Yes, but he didn't testify that nobody else used it.

(Testimony of John R. Scott.)

Mr. BAYLESS.—I beg your pardon, I think he did.

The COURT.—Not in the examination in chief.

Mr. BAYLESS.—I have a note here: “To 1913 no one occupied the ground but James.”

Mr. GUNNISON.—That is my recollection of it.

The COURT.—Then your objection is not well taken.

Mr. GUNNISON.—My objection is to anchoring of boats in front of there.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Did you ever see any boats laid up on the beach where the gridiron is now at any time from 1900 to 1913? A. I don't know.

Q. Are you able to say whether that beach was always claimed up to the time you built the platform and that nobody had ever occupied it except Mr. James?

A. I am not able to say anything like that or whether there was anything there at any time or not.

Q. You are not prepared to say, Mr. Scott, that no one used this [302—262] beach besides Mr. James from 1900 to 1913?

A. To my knowledge is what I said before, I never saw anyone occupy it.

Q. Did you ever see any boats land up there?

Mr. GUNNISON.—Object to that as being a repetition.

The COURT.—Objection overruled.

A. Why boats couldn't land in there in front of that gridiron.

(Testimony of John R. Scott.)

Q. (By Mr. BAYLESS.) I will call your attention to this fact, Mr. Scott. You know in the winter times and other times and at various places around this beach, fishing boats lay up for repairs—to be painted and for other purposes. Did you ever see any fish boats laid up for repairs or beached where the gridiron is now? A. No, not that I know of.

Q. Did you ever land rafts of lumber there yourself except on one occasion? A. No.

Q. After this platform was built, did you ever see Mr. Davidson occupying the platform?

A. I don't know as I can answer that, because I don't know anything about Davidson's business, whether he was occupying it or whether it was someone else. It was occupied that summer for lumber that was brought from the Wrangell sawmill.

Q. So somebody else did occupy it from 1900 to 1913 besides Mr. James?

A. That summer, yes; that was in 1905.

Q. In 1905 it was used by the Perseverance people or by Mr. Davidson?

A. Davidson is the only one I know of. The Perseverance people occupied it some—they paid me for repairs on the wharf there that same summer, I think it was in the fall.

Q. Who paid you? [303—263]

A. The Perseverance folks.

Q. Did they pay you for erecting that old platform—did the Alaska Perseverance Mining Company pay you for your services in erecting the old platform?

A. No.

(Testimony of John R. Scott.)

Q. Who paid you? A. Davidson.

Q. And the Perseverance Company paid you for certain repairs you put on the platform after it was built? A. Yes.

Q. Do you know whether or not Mr. James occupied this platform during the summer of 1905?

A. I have already said three different times that I never saw Mr. James occupying it at any time.

Q. The old platform?

A. That old platform. I don't know that he occupied it at any time.

Q. Did you see Mr. James landing scows on the beach, on the old platform, in the summer of 1905?

A. Yes.

Q. How frequently?

A. He landed there—one there while I was building those benches.

Q. And he landed it on this little old gridiron which was in front?

A. Well, it wasn't in front—it was a little to the side there, and yes, he landed it.

Q. Do you know what became of the lumber that was landed at that spot?

A. Carted it up town there somewheres. The teams hauled it away.

Q. Was there any time you saw Mr. James landing lumber there in the summer of 1905?

A. Why, I don't recall any particular time.

Q. Did you see Mr. James himself unload this lumber which you have [304—264] testified as having been unloaded while you were building the old plat-

(Testimony of John R. Scott.)

form? A. Unloading it himself?

Q. Himself, yes. A. No, I don't think so.

Q. Was he present on the ground?

A. He was present once that I know of on the ground.

Q. What was he doing at that time?

A. The same as any business man would be doing.

Q. What is that, Mr. Scott?

A. Looking around, rubber-necking around, seeing what other people is doing.

Q. Was he doing anything on the ground?

A. No work, only perhaps he might be telling someone else what to do.

Q. Did you have any conversation with him at that time? A. Not particularly.

Q. Do you know what he was doing on the ground?

A. No, I don't know what he was doing there.

Q. Do you know whether or not he had anything to do with landing of the lumber there—do you or not?

A. Only so far as I know it came from the saw-mill over there on the island.

Q. Do you know whether it came from that saw-mill or the Wrangell sawmill?

A. I know it came from Douglas Island.

Q. Well, that is once; did you ever see Mr. James more than once on the ground during the summer of 1905? A. I don't remember how many times.

Q. Was Mr. James there while you were building this platform? A. Yes.

Q. And he saw you build it?

(Testimony of John R. Scott.)

A. Yes. [305—265]

Q. Did you have any conversation while you were building this platform?

A. Oh, same as one—anybody to talk to another.

Q. Did he order you not to build this platform?

A. No.

Q. Did he say anything to you about discontinuing that work? A. No.

Q. The rafts or the scows which came from Wrangell loaded with lumber for the Perseverance were landed right there in front of this old platform?

A. Yes.

Q. They were landed on the same spot where the gridiron is now? A. Pretty much; yes.

Q. Do you know whether or not Mr. James saw that done or not?

Mr. GUNNISON.—Object to that question on the ground that it is irrelevant, incompetent and immaterial, and not proper cross-examination.

The COURT.—I don't see how it is cross-examination.

Mr. BAYLESS.—Very well, sir.

Q. Did you set these piles in 1905 yourself, Mr. Scott? A. Yes, I did.

Q. Did anybody else drive any piles—assist you?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Driving what?

Mr. BAYLESS.—Driving piles.

Mr. GUNNISON.—I think he has already gone over that.

(Testimony of John R. Scott.)

The COURT.—No, I think you may answer that question.

Mr. GUNNISON.—We didn't go into the matter of form of construction.

Q. (By Mr. BAYLESS.) Did anybody drive any piles for you? A. Yes. [306—266]

Q. Who was that? A. Webster.

Q. How many piles did Webster drive?

A. Eight.

Q. Where were those piles situated?

A. The two front rows.

The COURT.—Well, that is far enough, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. Scott, since the gridiron has been built, the one now occupied by Mr. James, have you seen anyone else land stuff, materials or supplies, on that gridiron besides Mr. James?

A. No, not that I know of.

Q. How often have you seen Mr. James land stuff on this present gridiron since it has been built?

A. I couldn't say as to that, quite often.

Q. Can you say how many times a year you have seen it? A. No.

Q. More than a few times, or just give me some idea as to how often you have seen it done, Mr. Scott?

A. I don't know how often they used it. I have noticed scows there.

Q. Did you notice anybody else's scows except Mr. James'? A. I never did.

Q. Did you build the approach toward town?

(Testimony of John R. Scott.)

A. No.

Q. You had nothing to do with that? A. No.

Q. Did you build the other approach? A. Yes.

Q. That was done in 1912, was it? A. Yes.

Q. Do you know when the street was completed from the Juneau Iron [307—267] Works down to the sawmill?

A. I don't remember when it was built; I think in six, seven—six probably.

Q. 1906. Well, was Mr. James' gridiron built before this street was planked or afterwards?

A. I don't remember; I don't know whether or not that particular gridiron was built.

Q. Was the street planked through there before they built the old platform? A. No, it wasn't.

Q. Do you know whether or not in the summer of 1906 the street was built?

A. No, I don't remember.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Do you know whether the street as it now stands covers at least a portion of the ground on which the old platform stood?

A. I think it does; I am not sure.

Q. Now, I understood you to say that during the summer of 1901 and 1902, or during all the time from 1900 up to the present, you have lived in town when you haven't been out of the country? A. Yes.

Q. And even when you were working in the Basin that you lived in town? A. Yes.

(Testimony of John R. Scott.)

Q. Now, which Basin was it you were working in, the Last Chance or the Perseverance Basin?

A. The Last Chance. [308—268]

Q. And what was that Last Chance—who furnished the lumber that went into the Last Chance Basin?

Mr. BAYLESS.—Object to that as irrelevant, incompetent and immaterial.

Mr. GUNNISON.—Counsel brought that out.

Mr. BAYLESS.—Not to my knowledge, I didn't. I was talking about lumber that went into the Perseverance mill.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Who furnished the lumber that went into the Last Chance flume?

A. Mr. James.

Q. Where was it landed, if you know?

Mr. BAYLESS.—Same objection.

The COURT.—Same ruling.

A. I don't know as to that.

Q. Do you know where it was landed here?

A. No, I don't. It was brought to me on teams. The people told me it came from James. I used to see James on the job occasionally.

Mr. BAYLESS.—We move to strike the last part of the answer on account of its being hearsay and not responsive.

The COURT.—The last part of his answer was that he used to see Mr. James on the job occasionally—that isn't hearsay.

Mr. GUNNISON.—Of course, the other part—

(Testimony of John R. Scott.)

that they told him—is hearsay.

Q. During that time you were employed in the Last Chance Basin did you, or did you not, see lumber from the James mill land on this tract in controversy?

A. I am not sure that I—I am not sure that I saw it landed.

Q. I don't mean lumber for the Last Chance, but I mean did you see any lumber from the James mill land on this piece of ground during that time; I thought you testified to that? [309—269]

A. I don't remember.

Q. Did you see any lumber from the James mill landed on that ground in the summers of 1901 or 1902, either year, 1901 or 1902?

A. Why, the scows used to land there and were unloaded there, and brought up town.

Q. How many rafts have you seen in there during the year—did you see in there during the year?

A. I couldn't say.

Q. More than one? A. Yes, more than one.

Q. Has there been any year since 1900 that you haven't seen more than one scow in there where scows with lumber from the James' mill landed?

A. Not that I know of.

Mr. GUNNISON.—That is all.

(Witness excused.) [310—270]

The COURT.—Have you any other witnesses than Mr. Ewing, Mr. Bayless?

Mr. BAYLESS.—Mr. Ewing and Mr. Dautrick.

The COURT.—Let the record show that the plain-

(Testimony of John R. Scott.)

tiff is permitted to introduce Mr. Dautrick and Mr. Ewing as witnesses in chief to show acts of dominion and ownership exercised on the premises in dispute, irrespective of transactions in which Mr. James himself is concerned—transactions with Mr. James.

Mr. GUNNISON.—To which we object.

The COURT.—To which the defendant objects and exception is allowed.

[Testimony of A. S. Dautrick, for Plaintiff.]

A. S. DAUTRICK, a witness called and sworn in behalf of the plaintiff, it having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name? A. A. S. Dautrick.

Q. Your residence? A. Juneau.

Q. And your occupation?

A. Agent of the Great Northern Railway.

Q. When did you first come to Juneau, Mr. Dautrick?

A. '98. I went away, then, however, and came back in 1901.

Q. You resided in Juneau in 1901? What was your business then?

A. I was agent for the Pacific Coast Company from September, 1901, to September, 1903.

Q. Whom did you succeed as agent?

A. H. F. Robinson. [311—271]

Q. How long had Mr. Robinson been agent?

(Testimony of A. S. Dautrick.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—I don't see what that has to do with it, Mr. Bayless.

Q. (By Mr. BAYLESS.) What were your duties as agent of the Pacific Coast Company?

A. Well, I had charge of the Pacific Coast Company's property and coal business and was agent for the Pacific Coast Steamship Company in their transportation business.

Q. When you became the agent of the company, what, if anything, was done with reference to transferring to you the supervision of the company's property here in Juneau?

Mr. GUNNISON.—We object to the question on the ground that it is irrelevant, incompetent and immaterial, and too indefinite. The only property claimed by the company is the property which is in controversy here.

The COURT.—Well, of course, if it doesn't include the property in controversy, it would not be material. Objection overruled.

A. Why, such general acts as always take place when transferring an agency. The property was pointed out to me and the boundary lines of the real estate and it was shown which property belonged to the Pacific Coast Co. and what the manner of handling had been—general transfer.

Q. (By Mr. BAYLESS.) Are you acquainted with the old Carroll-Murray Wharf Site property?

A. Yes, sir.

(Testimony of A. S. Dautrick.)

Q. When did you first become acquainted with that property?

A. When I first came to Juneau, but became intimately acquainted with it when I became agent.
[312—272]

Q. Was that part of the property that was transferred to you by the other agent? A. Yes, sir.

Mr. GUNNISON.—We object to that question as leading.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, sir.

Q. (By Mr. BAYLISS.) Are you acquainted with the property in dispute between the Pacific Coast Company and Mr. James in this case?

A. Yes, sir.

Q. Is that property a portion of the Carroll-Murray wharf site?

Mr. GUNNISON.—Same objection.

The COURT.—That objection will be sustained. You may ask him whether that was turned over to him.

Q. (By Mr. BAYLESS.) Was that piece of property turned over to you?

Mr. GUNNISON.—We object to that question on the ground that it is too indefinite—that piece of property.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, sir.

Q. (By Mr. BAYLESS.) That is to say, the

(Testimony of A. S. Dautrick.)

piece of property in dispute in this case was turned over to you by Mr. Robinson? A. Yes, sir.

Mr. GUNNISON.—We object to the question as leading.

The COURT.—The question has been answered now.

Mr. GUNNISON.—Well, we move to strike it.

The COURT.—The motion will be denied.

Q. (By Mr. BAYLESS.) Mr. Dautrick, what, if anything, did you do during the time you were agent of this property, agent of the company, with reference to this particular piece of property?

The COURT.—In dispute?

Mr. BAYLISS.—In dispute in this action.
[313—273]

A. I don't believe I quite got that.

Q. Did you have supervision of this property in dispute while you were agent?

Mr. GUNNISON.—We object to that question as leading and suggestive and a repetition.

The COURT.—Objection sustained. Your first question was: "What, if anything, did you do."

Q. (By Mr. BAYLESS.) What, if anything, did you do with reference to this property while you were agent?

A. Nothing particularly. There was not much to do.

Q. What was the situation on the ground at that time?

A. Well, the property was just about as it is now with the exception of that gridiron, and occasionally

(Testimony of A. S. Dautrick.)

small boats would come in there and use that beach and a raft of lumber would be brought in or a scow of lumber once in a while.

Q. Do you know who occupied this beach during the time you were agent?

A. Nobody occupied it in any permanent way. It was used by comers and goers for their boats and rafts—sort of a—well, they just went upon it because it was a convenient place to go I suppose is the right way to explain it.

Q. Did you have any instructions from the company with reference to supervising this piece of property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, calls for a conclusion of the witness and is not the best evidence.

The COURT.—The question is objectionable because it is hearsay and not binding on the defendant.

Mr. BAYLESS.—The objection will be sustained?

The COURT.—Yes.

Q. (By Mr. BAYLESS.) Did you do anything towards preventing anyone [314—274] from using this beach while you were agent?

Mr. GUNNISON.—We object to the question as irrelevant, incompetent, and immaterial, leading and suggestive.

The COURT.—The objection is sustained on the ground that it is leading.

Q. (By Mr. BAYLESS.) What, if anything, did you do towards permitting anyone to occupy this beach while you were agent?

(Testimony of A. S. Dautrick.)

A. Why, the only—occasionally people wanted to use that beach down there and I don't know that I did anything particularly—the only specific instance I know of I gave Gus Messerschmidt permission to land a load of wood there.

Q. Do you know what time that was?

A. I think it was in the fall of 1901; it was either 1901 or 1902.

Q. Do you know whether or not Mr. Messerschmidt occupied this particular piece of tide lands for landing his wood there?

A. My judgment is it was the same piece, same place.

Q. Did Mr. Messerschmidt use the beach for that purpose?

Mr. GUNNISON.—We object to the question as leading, suggestive—what he did—and that it is a conclusion.

The COURT.—The status of this witness should be thoroughly understood. This is your examination in chief. You are now asking him whether or not they permitted Mr. Messerschmidt to occupy it.

Mr. BAYLESS.—Yes.

The COURT.—How does that go to assist your case one way or the other?

Mr. BAYLESS.—Isn't that an act of ownership?

The COURT.—Not that Mr. James has anything to do with one way or the other.

Mr. BAYLESS.—This is irrespective of Mr. James—it is a circumstance to indicate that we claimed the property at that [315—275] time and

(Testimony of A. S. Dautrick.)

were acting as the owner of it.

Mr. GUNNISON.—No adverse holding of Mr. James though.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. We object to that question “If he used it for that purpose” as leading and suggestive and calling for a conclusion of the witness. If he asks what Mr. Messerschmidt did pursuant to that permission, we don’t object to that.

The COURT.—I don’t think it makes any difference what Mr. Messerschmidt did in pursuance to that permission. The question is whether you exercised ownership—that whatever Mr. Messerschmidt did was by permission of the company. What he did or how much he occupied I don’t think is material. Your own theory is to show that you had supervision of the matter and in pursuance of that you gave permission to Mr. Messerschmidt. What he did—how much of it he used—I don’t see how that is material.

Mr. BAYLESS.—I would like to show acts of ownership, if the Court please.

The COURT.—An act of ownership isn’t what he did, but it is your giving the permission.

Mr. BAYLESS.—I would also like to show acts of actual occupation by our tenants.

The COURT.—If you propose to show that it was by your tenants, it would be a different proposition.

Mr. BAYLESS.—That is the purport of this.

The COURT.—You claim that Mr. Messerschmidt was your tenant?

(Testimony of A. S. Dautrick.)

Mr. BAYLESS.—Our permittee.

The COURT.—You have already shown that.

Mr. BAYLESS.—And for that reason I would like to show that pursuant to that permission he became our tenant. [316—276]

Q. (By Mr. BAYLESS.) Mr. Dautrick, what, if anything, did Mr. Messerschmidt do pursuant to that permission given by you to him?

A. Why, he had a load of wood brought in there and piled on the beach.

Q. Was that wood—where, with reference to high and low tide, was that wood placed?

A. I should say that some of it was on the beach, on the upper beach and some on the bank; that would be my recollection.

Q. How did Mr. Messerschmidt get to the beach to use it for that purpose?

Mr. GUNNISON.—We object—well, I will withdraw the objection.

The COURT.—It seems to me you are going too far, Mr. Bayless. I don't understand how it is material one way or the other.

Mr. BAYLESS.—May I make a statement?

The COURT.—Certainly.

Mr. BAYLESS.—I propose to show that Mr. Messerschmidt used part of the uplands and part of the tide lands; that he landed his wood right over the tide lands in dispute, and that he came in there in that way.

The COURT.—By your first question you asked him where he landed the wood. How he got to the

(Testimony of A. S. Dautrick.)

wood afterwards—what has that got to do with it?

Mr. BAYLESS.—I wanted to show that Mr. Messerschmidt unloaded his wood on this piece of tide lands and stacked it up partly on the upland and partly on the tide land.

The COURT.—He has already testified to that.

Mr. BAYLESS.—I wasn't aware of that.

The COURT.—Why certainly.

Q. (By Mr. BAYLESS.) What, if any, other acts of ownership or supervision did you exercise with reference to this property [317—277] while you were the agent?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial and as calling for a conclusion of the witness—"other acts of ownership."

The COURT.—Yes, that calls for a conclusion of the witness as to what he did. Ask him what he did with reference to this property—that is a plain simple question.

Q. (By Mr. BAYLESS.) What did you do with reference to that property?

A. Nothing more but to look after it the same as any other property claimed by the company, paid taxes on it, and treated it as any other property of the company.

Q. While you were agent did you know of any adverse claim of ownership of this property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, immaterial, leading and suggestive.

(Testimony of A. S. Dautrick.)

Mr. BAYLESS.—I would like to be heard on that.

The COURT.—Very well.

Mr. BAYLESS.—If the Court please, Mr. James must show exclusive possession, open, adverse, and notorious possession, in order to recover.

The COURT.—Yes, but you are introducing Mr. Dautrick in chief. You don't know what Mr. James is going to show.

Q. (By Mr. BAYLESS.) You say you paid the taxes on it while you were agent? A. Yes.

Mr. GUNNISON.—Just a minute. We move to strike the testimony of Mr. Dautrick with reference—that he paid the taxes on the ground, as incompetent, irrelevant, and immaterial, and not the best evidence.

The COURT.—He has not given any testimony about the payment of taxes yet.

Mr. GUNNISON.—I think he did. [318—278]

The COURT.—Mr. Dautrick?

Mr. GUNNISON.—Yes—among other acts, under general supervision, he paid the taxes.

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) I understood you to say you paid the taxes on this property while you were agent?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

A. I paid them for the company, yes, sir.

Q. (By Mr. BAYLESS.) Mr. Dautrick, while you were agent was Mr. James hauling lumber or

(Testimony of A. S. Dautrick.)

supplies and landing them on this particular piece of property?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not within the issues as set up by the plaintiff's complaint.

The COURT.—I cannot tell yet, Judge Gunnison, whether it is material or not. Suppose Mr. James or anybody else was using the beach for any particular thing and he goes and orders him off. Now, that would be an act of ownership. Of course, I cannot tell whether it is going to be material or not, but that question so far as it has gone is preliminary.

Mr. GUNNISON.—Exception. We also object to the question as leading and suggestive.

The COURT.—Objection overruled.

A. I think he was.

Q. (By Mr. BAYLESS.) Do you know how frequently he landed lumber on the beach while you were agent? A. No, I do not.

Q. Did you know that he was landing on the beach there? A. Yes, sir.

Q. Did you do anything toward preventing his landing there? [319—279] A. No, sir.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and the reasons why he didn't.

The COURT.—Yes, I think so, Mr. Bayless, unless you can make it appear where your idea is relevant, I think a motion to strike it as not being relevant will be sustained.

(Testimony of A. S. Dautrick.)

Q. (By Mr. BAYLESS.) Why was it you didn't order Mr. James off?

Mr. GUNNISON.—We object to that. That is a different question, your Honor. “Why didn't he do it”? Now he has changed it and we object to it as irrelevant, incompetent, and immaterial.

The COURT.—That isn't showing the exercise of acts of ownership. That is showing the reasons why he didn't exercise the act of ownership. That would be properly rebuttal.

Mr. BAYLESS.—Very well, sir, that is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You were here, I think you said, between September, 1901, and September, 1903, as the agent of the Pacific Coast Company? A. Yes, sir.

Q. And you said that when the property was turned over to you such acts were done as usually take place upon the transfer of an agency?

A. Yes.

Q. What are those acts?

A. The ordinary practice is, an inventory is shown to the incoming agent and it is checked up and where there is real estate and if he thinks it worth while, he is shown the boundaries of it to know where it is; in other words, he receives the physical property from the retiring agent. [320—280]

Q. As per inventory?

A. No, the inventory isn't a necessary part of it; I have received a number of agencies where I didn't receive an inventory.

(Testimony of A. S. Dautrick.)

Q. How did you receive it?

A. I received the personal property as per inventory and the real estate by being shown the boundaries.

Q. Did they take you to the ground?

A. Yes, sir.

Q. What time in September was it?

A. I think it was about the 15th.

Q. Fifteenth of September, 1901?

A. I think so.

Q. Where did you go to be shown the boundaries?

A. No boundaries, didn't show me the boundaries. Mr. Robinson had started for the south before I got here and Mr. Hart, who was the cashier, turned the agency over to me.

Q. Then Mr. Robinson didn't surrender the property to you?

A. Yes, he did it through his cashier.

Q. Was Mr. Hart Mr. Robinson's agent or the agent of the Pacific Coast Company while Mr. Robinson was absent?

A. Mr. Hart was cashier for the Pacific Coast Company and—

Q. Acting agent?

A. Mr. Robinson received permission from the general offices in Seattle to leave here before I got here, with instructions to have Mr. Hart turn the agency over to me.

Q. So that really Mr. Hart was acting agent there in Mr. Robinson's absence? A. Yes.

Q. What did Mr. Hart do with reference to this

(Testimony of A. S. Dautrick.)

piece of property in controversy.

A. Mr. Hart asked Mr. McLaughlin, who was the agent on the dock, [321—281] to go down there and show me the boundaries of the property.

Q. Mr. McLaughlin? A. Yes, sir.

Q. Then Mr. Hart didn't go with you?

A. No, sir.

Q. Do you know whether or not Mr. McLaughlin knew where the boundaries were?

A. I am sure he did.

Q. Why are you sure?

A. He had made several maps of the property.

Q. Where is Mr. McLaughlin now?

A. I do not know.

Q. Did he take a map with you and show you?

A. Yes.

Q. Where did you go?

A. Went down along the beach.

Q. That is rather indefinite, Mr. Dautrick.

A. Well, down to the old Carroll and Murray wharf and on down to what was called the boundary of the Pacific Coast property.

Q. What did he point out to you as the boundary of the property, Mr. Dautrick?

A. Why, a stake up on the bank, I should say up there among some of those cabins, a great big stake had been put in to mark the southern boundary.

Q. On the upland? A. Yes, sir.

Q. Did he point out anything to you on the beach?

A. No, the line was the line that was supposed to run down from that stake to deep water.

(Testimony of A. S. Dautrick.)

Q. Do you remember what he said about deep water? A. No, I do not. [322—282]

Q. Do you remember what he said about how far that boundary extended out over the tide flats?

A. No.

Q. Did the Pacific Coast Company at that time, or the Pacific Coast Steamship Co., have any structure or anything upon these tide flats in question to mark them as a portion of their property?

A. I am not positive, Judge Gunnison, but I believe there was an old pile there—it was pretty well worn down, and it was only to be seen at low tide, but I think there was an old pile there.

Q. And was that pointed out to you by McLaughlin? A. I think it was.

Q. That was on September 15, 1901?

A. Yes, sir.

Q. Is that pile there now? A. I do not know.

Q. Will you describe it as you saw it that day.

A. Well, it was just a short stub of an old decayed pile, black on top just like any old one would be.

Q. How far down on the beach was it?

A. I should think it was pretty nearly low tide; that would be my judgment.

Q. And where was it with reference to the company's line, right on the line with the stake on the upland? A. Yes, supposed to be on the line.

Q. Did you sight it? A. I think so.

Q. You got down and sighted over the line?

A. No; I didn't understand your question—I thought you meant whether I saw it. No, I didn't

(Testimony of A. S. Dautrick.)

take any measurements or sight it.

Q. Do you know whether it was on the line or not?

A. I would say it was, yes, sir. [323—283]

Q. When was the last time you thought of that old pile on the waterfront since the time it was pointed out to you.

Mr. BAYLESS.—Object to that as incompetent, irrelevant, and not proper cross-examination.

Q. (By Mr. GUNNISON.) Prior to this time?

The COURT.—Objection overruled.

A. Well, I really don't think I thought much about it until—I suppose I thought about it last winter when these squatter cases were on and I suppose I thought of it at that time.

Q. (By Mr. GUNNISON.) Now positively, Mr. Dautrick, when did you think of it?

A. I can't be positive of that at this time—it was ten years ago. I know I thought about it when this case came up, when the matter of the transfer of the agency was talked about.

Q. You remember that in 1901, September 15th,—what time of day was it?

A. Why, it must have been along in the afternoon, because I know we were busy in the office in the morning.

Q. Was it a fair day or raining?

A. I cannot remember that.

Q. Was anybody else with you besides McLaughlin? A. No.

Q. What other stakes were pointed out to you at the time? A. That was all.

(Testimony of A. S. Dautrick.)

Q. Just those two stakes,—that lower pile at low water mark, was there a mound around it?

A. I couldn't tell you that, because it wasn't entirely bare.

Q. You were down there at low water?

A. I imagine it was low water or about low water.

Q. But you say you couldn't see it unless it was low water?

A. It was approximately low water I said.

Q. I mean, was it at low tide when this was pointed out to you? [324—284]

A. I am not positive whether it was entirely low tide or not.

Q. But that pile was visible when you saw it on the afternoon of the 15th of September, 1901?

A. There was a top of an old black pile which McLaughlin pointed out to me as on the line.

Q. You don't know how high it was?

A. No, but from the looks, it couldn't be very high.

Q. What was its diameter? A. I do not know.

Q. How close did you get to it?

A. I stood on the bank.

Q. How far was it from where you stood on the pile?

A. I don't know; I don't know how much the tide recedes down there.

Q. Did you ever see it afterward?

A. I think so.

Q. Well did you—not think so?

A. I am not positive.

Q. You don't remember having seen it since?

(Testimony of A. S. Dautrick.)

A. No.

Q. You have been there at low tide, when the tide was away out? A. Lots of times.

Q. And when you turned this property over to Mr. Swan later, did you point that pile out to him?

The COURT.—Well, I don't think that is cross-examination, Judge Gunnison. It opens up so many things that the other side would be entitled to redirect on, unless objection is made. If counsel doesn't object, I am going to interrupt it myself so as to shut those things off.

Q. (By Mr. GUNNISON.) Now, what else was there on this piece of tide land besides this pile?

A. Not anything.

Q. Was there any location notice there? [325—285]

A. No, sir.

Q. Now, when was the first you exercised any act of ownership over that; what was the first act of ownership you exercised over that after having been down there looking at it?

A. Well, I think probably the next thing that I did was to talk with Messerschmidt about landing some wood there.

Q. When did Mr. Messerschmidt land wood there?

A. I am not sure whether it was the first year or the second year I was here; it was either 1901 or 1902.

Q. And did you give him a written or verbal permit? A. Verbal.

Q. He came to you and asked you if he might land it there? A. Yes, sir.

(Testimony of A. S. Dautrick.)

Q. And you said what? A. I said he could.

Q. He hadn't gone on there with the wood and you had asked him what he was doing there?

A. No, sir.

Q. Where was it you saw Mr. Messerschmidt—where did you see Messerschmidt on this occasion?

A. That is, when the conversation took place?

Q. Yes, sir.

A. In the Pacific Coast Company's office.

Q. Was the wood already on the ground or had it not yet been landed there?

A. It hadn't been landed yet.

Q. Now, when was it landed with reference to the time of your conversation with Mr. Messerschmidt?

A. Oh, I don't know. I should say a couple weeks later, because he told me he had some Indians cutting wood for him, so I imagine it didn't come in till later.

[326—286]

Q. Did you see that wood down there?

A. Yes, sir.

Q. Part of it was on the beach and part on the upland?

A. My recollection is that he laid some of the wood—made a cribbing of some of the wood on the upper portion of the beach, then piled wood on that and some on the upland.

Q. Was that below the line of mean high tide?

A. Yes.

Q. So it was out of reach of the water?

A. Well, the water would lap it a little, but not enough to take it out.

(Testimony of A. S. Dautrick.)

Q. You mean at high tide? A. At high tide, yes.

Q. How many loads of wood did he discharge there that summer? A. That I do not know.

Q. Do you know whether there was more than one?

A. I believe there was, but I am not sure, because after he started work there I didn't pay any attention to it.

Q. Was anybody else using that tide land at that time for any purpose, to your knowledge?

A. Why, I think Mr. James was using it occasionally.

Q. Was there any one else using it?

A. Why, temporarily; there were people running boats in there, small fishing-boats or a dory, or something of that sort.

Q. Was Mr. James there under permission from you?

A. He was there under permission from the company.

Q. In what way?

A. He had permission from the man who preceded me as agent.

Q. How do you know?

A. Merely by his statement to me.

Q. Whose statement.

A. Mr. Robinson's. [327—287]

Q. When did you see Mr. Robinson?

A. At Seattle before I came up.

Q. How came you to discuss that with Mr. Robinson?

A. Because when I came here as agent, I was in

(Testimony of A. S. Dautrick.)

Seattle and I went up to the office of the attorney for the Pacific Coast in order to learn what the situation was about this property, which was then in litigation, and otherwise I probably wouldn't have known anything about it.

Q. That is, before you came up here this time?

A. No, before I came here as agent in 1901.

Q. Now, Mr. Robinson was there? A. Yes, sir.

Q. What did he say to you?

A. Well, after we talked generally about agency matters and among other things he said the policy was not to permit any permanent structures or any occupation of that tide land, which they expected to use as a wharf later on.

Q. What else did he say—what did you say then?

A. There wasn't much for me to say; all I wanted was to know what to do.

The COURT.—Well, when Mr. Bayless wanted to go into that matter, I sustained your objection, and now if you cross-examine him on that it isn't cross-examination.

Mr. BAYLESS.—I have no objection.

The COURT.—I don't care whether you have or not.

Mr. BAYLESS.—I want to examine him, if the Court please.

Mr. GUNNISON.—Well, I don't care—it is all hearsay anyway.

Q. If Mr. Messerschmidt in the preliminary hearing of this case, testified that he had about forty-five cords of wood laying there and went down for the

(Testimony of A. S. Dautrick.)

wood and the Pacific Coast Company [328—288] asked him if that was his wood and he told them it was and he was then asked whether he laid any claim to the ground, would he be testifying to the truth or was he mistaken?

A. No, I suppose he was testifying to the truth; I think there might be a mistake on the part of either of us. I am testifying as to my recollection of it, Judge.

Q. You wouldn't say positively that you gave Mr. Messerschmidt the permission before he went on, or whether it was after?

A. I would say positively that my recollection is that he came to the office and spoke about landing the wood there and was given permission. I might be mistaken.

Q. You wouldn't say that was after or before the wood was put on?

A. No, but my judgment is before.

Q. So that Mr. Messerschmidt was mistaken as you recollect it? A. As I recollect it, yes, sir.

Q. What did you do in 1902 with reference to this ground?

A. Not anything except what I did in the year before.

Q. Now, Mr. James was still landing wood—I think you testified that Mr. James was landing lumber on the beach during those two years you were agent? A. I think he was, yes, sir.

Q. And you did nothing to stop him using it during that time? A. No, sir.

(Testimony of A. S. Dautrick.)

Q. How much taxes did you pay on this particular piece of ground? A. I can't tell you that.

Q. Did you pay the taxes—you testified that you paid the taxes on the Pacific Coast Company's property here? A. Yes, sir.

Q. Did you pay a sum on the whole of the Pacific Coast holdings?

A. Yes; you know how the statement comes from the Treasurer. I paid the whole thing in one check.

[329—289]

Q. And you paid it on the Murray and Carroll wharf site? A. Yes, sir.

Q. And as it was included in the whole—hadn't been segregated by any account—then you paid it on this? A. Yes, sir.

Q. And if it had been, you wouldn't pay it on this?

Mr. BAYLESS.—I object to this as argumentative.

The COURT.—Yes, I think so.

Q. (By Mr. GUNNISON.) Are you able to state whether you paid any taxes on this particular piece of ground in controversy? A. Yes, sir, I am.

Q. Now, how do you figure that out?

A. Because the property was in litigation and I didn't take the chance of anybody else paying it.

Q. This property?

A. This Carroll-Murray wharf tract.

Q. The Carroll and Murray wharf site?

A. At that time—I paid it.

Q. So far as paying on this particular piece, you didn't make any special payment on this particular

(Testimony of A. S. Dautrick.)

piece? It was a general payment? A. Yes.

Q. During any time you were here did the Pacific Coast Company, or the Pacific Coast Steamship Company, or you, as their agent, use this particular piece of ground in controversy for any purpose whatever?

A. No, sir.

Mr. GUNNISON.—That is all. [330—290]

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did any tenant of the Pacific Coast Company, or permittee, use this particular piece of property while you were agent?

Mr. GUNNISON.—That is objected to as leading, suggestive, and part of their examination in chief.

The COURT.—It is not redirect examination.

Mr. GUNNISON.—That is what I mean.

Mr. BAYLESS.—If the Court please, he just asked if we used it ourselves.

The COURT.—He never asked whether any permittee used it. He asked him if the Pacific Coast Company used the ground. He said no.

Q. (By Mr. BAYLESS.) I believe I understood you to say that this piece of property was a portion of the Carroll-Murray wharf site? A. Yes, sir.

Q. You paid taxes on the whole Carroll-Murray wharf site? A. Yes, sir.

Q. Including this piece of property?

A. Yes, sir.

Q. Was Mr. James the only occupant or casual user of this piece of property during the time you were agent?

(Testimony of A. S. Dautrick.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper redirect examination.

The COURT.—Objection sustained on the ground that it is not redirect examination.

Mr. GUNNISON.—There is one question on cross-examination that I would like to ask—I omitted it—if I may have that permission.

The COURT.—Proceed. [331—291]

(By Mr. GUNNISON.)

Q. Mr. Dautrick, during the time you were the agent for the Pacific Coast Company, did the Pacific Coast Company use the Murray and Carroll wharf for the purpose of landing any of its vessels, or was it used as a public wharf at that time?

A. It was used as a public wharf, I should say, in the sense of a public wharf occasionally by small steamers, but not by the Pacific Coast Company itself.

Q. Did you have a wharfinger in charge of it?

A. No, if there was any—to make that clear to you, the people coming in with small boats would occasionally tie up there at the wharf and if they took anything across there we didn't pay any attention to it and wouldn't charge any wharfage, but no regular freight—just packages.

Q. You charged no wharfage?

A. Not for people taking small packages.

Mr. GUNNISON.—That is all.

(Continuation of redirect examination by Mr. BAYLESS.)

Q. Who was using the old Carroll wharf building

(Testimony of A. S. Dautrick.)

and approach there when you came here?

A. My recollection is that there was a man using the shore end of it and was rented out for residence purposes.

Q. Had the Pacific Coast Company abandoned that property?

Mr. GUNNISON.—We object to that as calling for a conclusion and not proper redirect examination.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Were these occupants tenants of the company? A. Yes, sir.

Q. And these buildings were occupied, were they, during the whole period of your agency? [332—292]

Mr. GUNNISON.—We object to that question as not proper redirect examination and leading.

The COURT.—Objection overruled—you went into the matter yourself.

A. Yes, sir.

Mr. GUNNISON.—Only as a wharf, your Honor.

The COURT.—Objection overruled.

(Witness excused.)

(Whereupon Court adjourned until 2 P. M. the same day, when Court reconvened pursuant to adjournment.) [333—293]

Mr. BAYLESS.—If the Court please, this morning I announced that I would have only two witnesses, Mr. Dautrick, and Mr. Ewing, in our case in chief. Since that time I have discovered some evidence which is very pertinent to the case in chief and which I didn't know existed at that time, and I desire the

(Testimony of A. S. Dautrick.)

privilege of submitting that as well. It goes to the early occupation of this property by the Pacific Coast Company and is of a similar character as that submitted by Mr. Wells. I would like very much to call Mr. Lloyd Winter and introduce a photograph. It will be very short and Mr. Winter is printing photographs at present and will be ready about three o'clock.

Mr. GUNNISON.—Well, we renew our objection to that, your Honor. Of course, it is in your Honor's discretion.

Mr. BAYLESS.—It is evidence that was discovered since this suit began.

The COURT.—How would you have gotten along, Mr. Bayless, if the defendant had gone on with his case—you wouldn't have his testimony at all. You cannot announce yourself ready to try a case and then urge as a ground for reopening it that you had recently discovered some more evidence. That certainly wasn't under a misapprehension of whether to put certain testimony in in chief or in rebuttal.

Mr. BAYLESS.—Your Honor is entirely right as to that, but it is evidence that I didn't know existed which is particularly relevant and I think it would be proper. It would be the kind of evidence that would warrant your Honor giving us a new trial in this case.

The COURT.—It is very irregular—I will permit you to do it.

Mr. GUNNISON.—We except. [334—294]

[**Testimony of S. H. Ewing, for Plaintiffs (Recalled).**]

S. H. EWING, a witness sworn in behalf of the plaintiff, being recalled to the stand, the plaintiff having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. You have been sworn, Mr. Ewing?

A. I have.

Q. During your time as agent of the company, what, if anything, have you done with reference to this particular piece of property in controversy as agent of the company?

Mr. GUNNISON.—I don't remember Mr. Ewing testifying as to how long he has acted as agent.

The COURT.—You had better ask him to make sure.

Q. (By Mr. BAYLESS.) When did you become agent of the Pacific Coast Company?

A. In January, 1911.

Q. You are agent of the company at the present time? A. I am.

Q. Since January, 1911, what have your duties been as agent with reference to the property involved in this case?

Mr. GUNNISON.—Object to that as a repetition of the evidence already given by Mr. Ewing as to what his duties are.

The COURT.—Well, he may state in a general

(Testimony of S. H. Ewing.)

way, because it is preliminary to a question that I suppose will follow.

Mr. GUNNISON.—And further it should be confined to the time between the appointment as agent and the time of the commencement of this suit.

The COURT.—Confine it to that time. [335—295]

Q. (By Mr. BAYLESS.) From January, 1911, down to last August, when this suit was commenced, what were your duties with reference to this property.

Mr. GUNNISON.—We object further as to what his duties were—what he did might be competent.

The COURT.—That is right.

Q. (By Mr. BAYLESS.) What did you do with reference to this property?

A. Looked after the company's interests in regard to it and paid the taxes on it.

Mr. GUNNISON.—We move to strike that as not responsive to the question.

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) Did you do anything else with reference to this property as the company's agent? A. No, sir.

Q. Just paid the taxes on it?

A. Paid taxes and saw that no squatters got on there—any people that hadn't any right, without the company's permission.

Q. Was anyone occupying the property when you became agent?

A. Mr. James had a gridiron on there and used to put scows on there and take off lumber. Mr.

(Testimony of S. H. Ewing.)

Webster had a pile-driver there one winter.

Q. Did you have any arrangement with Mr. Webster or Mr. James with reference to their occupancy of this property?

A. Mr. Swan informed me when I took over—

Mr. GUNNISON.—We object to anything Mr. Swan informed Mr. Ewing as hearsay.

The COURT.—That is correct. The witness will not testify as to what anyone told him.

A. There was one occasion there when Mr. Webster was putting his pile-driver on the ground and drove a couple of piles and I went after him and asked what he was doing. He said that he was [336—296] driving a couple piles, that he didn't lay any claim to the property.

Q. (By Mr. BAYLESS.) Did you have any arrangement with Mr. James with reference to his use of the gridiron?

A. Not personally, no, sir; it was before my time.

Mr. GUNNISON.—We move to strike the testimony of the witness that "it was before his time."

The COURT.—The motion will be granted.

Q. (By Mr. BAYLESS.) Did you do anything else as agent of the company with reference to this property? A. No, sir.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You say that you looked after the company's interests and paid the taxes, Mr. Ewing?

A. Yes, sir.

(Testimony of S. H. Ewing.)

Q. That Mr. James had a gridiron when you took possession?

A. There was a gridiron on there; yes, sir.

Q. You said Mr. James' didn't you?

A. If I did, I did it unintentionally. I said there was a gridiron there.

Q. Do you know whose it was? A. I did not.

Q. Do you know who used it?

A. I knew Mr. James used it.

Q. It is a fact that Mr. Webster has never claimed title to this? A. So I understand, yes, sir.

Q. And you had no arrangement with Mr. James?

A. No. [337—297]

Q. And in paying taxes, did you pay it on this particular piece of property or paid for the Carroll-Murray wharf site?

A. Carroll-Murray wharf site, which was divided into three different payments.

Q. Please describe those.

A. There was one valuation placed on the first two hundred feet—

Q. (By the COURT.) Uplands or tide lands?

A. Tide lands.

Q. (By Mr. GUNNISON.) Beginning where?

A. Beginning at the north end.

Q. You mean the east end?

A. Town end. The first 25 feet was assessed at one valuation and the next 200 at another, and the last, next 150 at another valuation, at so much per foot, which was the lower end of the tract. That was before it was replatted.

(Testimony of S. H. Ewing.)

Q. Then afterwards you paid it on each plat—on each lot? A. On each lot in the block.

Q. When was it platted?

A. Last summer or last spring, about a year ago.

Q. Who paid those taxes?

A. They haven't been paid yet.

Q. So you really haven't paid them on the lots and blocks?

A. Not for this year, but I did for last year.

Q. But you paid taxes last year, but not on lots and blocks?

A. On lots and blocks last year, yes.

Q. What time did you pay that tax?

A. It was around about in July sometime.

Mr. GUNNISON.—That is all.

(Witness excused.) [338—298]

Mr. BAYLESS.—I will be unable to offer Mr. Winter's testimony at this time, if the Court please. He advised me that he could not be ready before three o'clock.

The COURT.—Very well, proceed with the cross-examination of Mr. Webster.

Mr. GUNNISON.—This may require the calling of all our witnesses, if the Court please.

The COURT.—It may, Judge Gunnison, and you will be given an opportunity to do so.

[Testimony of Edward Webster, for Defendant
(Recalled—Cross-examination).]

EDWARD WEBSTER, a witness called and sworn in behalf of the defendant, having previously testified on direct examination, was further examined and testified as follows:

Cross-examination.

(By Mr. BAYLESS.)

Q. I believe in your direct examination your attention—you were merely asked to testify as to the facts and circumstances between 1900 and the date of the commencement of this suit; is that a fact?

A. Yes.

Q. In 1900 what was the condition of the old Carroll-Murray wharf?

A. The condition of the wharf proper?

Q. Yes.

A. The wharf was in bad condition in 1900.

Q. Was it being occupied by any person or corporation? A. No, not that I know of.

Q. No one was occupying any buildings there?

A. That I don't know; I know at that time there were people in there, but the exact time I don't know.

[339—299]

Q. Do you know whether or not it has been occupied from 1900 down to the date of the commencement of this case?

A. Yes, I know there has been—I know it was occupied there by someone who was living in it. I don't know, but I think Johnson was living there once and then had a sardine factory there and glove

(Testimony of Edward Webster.)

factory, but the exact dates I don't remember.

Q. When did Mr. James start to land lumber at this beach? A. That I don't exactly know.

Q. Do you remember when he first started?

A. I know that in 1904 I drove for him some piles there; he was landing then.

Q. Did you ever see him prior to that time?

A. Oh, yes, many a time he brought in scows and put them on the gridiron myself for him.

Q. Prior to 1904? A. Oh, no, after 1904.

Q. Prior to 1904 you haven't any knowledge of Mr. James' occupation there?

A. No; of course, I know he was landing lumber on the beach, but the dates I don't know.

Q. Did you ever see him before that time?

A. No.

Q. In 1904 you say you drove some piles?

A. Yes; drove two piles for him to tie up to.

Q. How far apart were those piles?

A. I think about ten feet.

Q. Were they perpendicular to the beach or parallel? A. No, they were up and down the beach.

Q. Extending out towards deep water?

A. Yes.

Q. One of the piles close to shore and the other one out towards deep water? A. Yes. [340—300]

Q. Whereabouts on that particular beach did you drive those piles?

A. Right in the line of the Young Company. I didn't know it at the time, but it proved that they were where the C. W. Young Company claimed.

(Testimony of Edward Webster.)

Q. Did Mr. James have any structure on the beach at that time?

A. No, I don't think so; I don't remember of any at that time.

Q. When was the C. W. Young wharf built?

A. That was built in 1910.

Q. Well, there were lots of piles driven before that time?

A. Yes, in 1908 I drove a row of piles for him there.

Q. Were there any piles on the line of the Young wharf when you drove these two piles for Mr. James?

A. No, sir; there was a pile up shore there that I drove for Carroll in 1887—that pile was still there.

Q. Is it standing there at the present time?

A. Well, I haven't noticed; it was there a few years ago.

Q. That also is in the line of the Young piles?

A. Yes, right in the line of it.

Q. When was the first structure put on there by Mr. James? A. That I couldn't tell you.

Q. Do you know anything about a platform put on there by Mr. Davidson? A. Yes.

Q. Where, with reference to the present gridiron, was that old platform located?

A. Well, I would say that it was further to the west and a little lower on the beach than the present gridiron that is there.

Q. It was closer to the water?

A. Closer to town.

Q. Was it immediately back towards the uplands

(Testimony of Edward Webster.)

from the present gridiron?

A. No, it was down pretty—had to get it down pretty well to get [341—301] the boat up there.

Q. How close in feet?

A. Oh, well, now, I never measured it—I couldn't say, I never measured it. I would say it was 50 feet down.

Q. Fifty feet away? A. Yes, further down.

Q. (By the COURT.) You mean the gridiron was 50 feet further down from the platform, or the platform further down from the gridiron?

A. No, the present gridiron was further down and fifty feet along there.

Q. Further down from what?

A. From where the present one is.

Q. You mean the first gridiron was fifty feet down the beach?

A. Yes, that is the way it looks in my mind now.

Q. (By Mr. GUNNISON.) Do you mean the gridiron or the platform?

A. The platform; from the present gridiron it was further toward the west from where the gridiron now stands.

Q. (By Mr. BAYLESS.) I call your attention to Defendant's Exhibit "A" and ask you if you can point out on this map the place where the old platform stood with reference to the gridiron which is shown there and just mark the place.

A. You see, it is pretty hard to say, because the street wasn't through there or anything. If I was going to say, I would say that the gridiron was along

(Testimony of Edward Webster.)

in there somewhere and around this way and was down a little further on the beach here, but this is only guesswork. Of course, I was in there once and drove some piles along where that was and that winter the whole structure went out so it was just—it is only guesswork. (Indicating.)

The COURT.—Well, mark it with a Z, the place where you think the platform was. [342—302]

Mr. GUNNISON.—Draw a line to cover the section.

A. Now, I would say it was right along in here. (Witness marking Defendant's Exhibit "A.")

Mr. BAYLESS.—Mark a Z in the middle of it. (Witness marks exhibit.)

Q. The street wasn't built down there when this old platform was put in?

A. No, sir, the streets weren't planked down there.

Q. Did you drive any piles for Mr. Scott?

A. Yes.

Q. Where, with reference to this platform—where on that plat did you drive those piles; that is to say, can you indicate on this plat where you drove the piles?

A. Well, along the face of where he had his platform.

Q. Mark it on there.

A. Well, it is along the face of that there. (Indicating.)

Q. The seaward face of this strip you have marked "Z"? A. The water side.

Q. Just two piles?

(Testimony of Edward Webster.)

A. Well, I don't remember; I was in there and charged him for a half day's work, and I don't remember just exactly how many I did.

Q. Who paid you for that work? A. Mr. Scott.

Q. Scott himself. A. Yes, Scott himself.

Q. Was Mr. James occupying any portion of that beach or using any portion of the beach?

A. Yes, Mr. James was using it.

Q. At that time? A. Yes, sir.

Q. Did Mr. James ever use this platform? [343—303]

A. That Scott built—no, I don't think so. It went out that winter and I don't think he used it, because he had a little gridiron or timbers that he was using himself.

Q. On this side of the platform?

A. Yes, on this side of the platform.

Q. How big was that little gridiron?

A. Of Mr. James'?

Q. Yes.

A. Well, it was some fourteen feet, sills laid down the beach. The top one was buried clear down into the beach.

Q. How big was the structure—what would be the dimensions?

A. I don't remember—probably thirty or forty feet long.

Q. And fourteen feet wide? A. Yes, sir.

Q. Did you ever see any lumber from—

The COURT.—Wait, Mr. Bayless, just a moment. I wish you would take that map, Mr. Webster, and

(Testimony of Edward Webster.)

mark on the map where you think this first gridiron that you say was Mr. James' was located. Mark that with an "M."

A. That laid right along in here. (Witness indicating.)

The COURT.—You have already marked it "G."

A. That is where that pile is (indicating). That gridiron lay right in here—here is where I drove the piles on this line and he had a little gridiron right in here—"M."

Q. (By Mr. BAYLESS.) Does this sketch represent this gridiron?

A. Yes. Now, this is where he had those timbers—drove piles in here and had timbers right in here so as to lay it on. Right in here is a flat rock and they used to drive in this way. This gridiron wasn't here then. (Witness indicating.)

Q. Do you know when this smaller gridiron was built, Mr. Webster? A. No, I do not.

Q. At that time, in 1904, Mr. Webster, how frequently did Mr. James [344—304] have occasion to land scows and rafts at this beach?

A. That I couldn't say; I wasn't around all the time.

Q. How frequently did you observe him do that?

A. That I couldn't say. Of course, I wasn't in town all the time. I was running a pile-driver and was away.

Q. Did you see anybody else landing there besides Mr. James on that beach?

A. Yes, I have seen—when do you mean?

(Testimony of Edward Webster.)

Q. At any time from 1904 down to 1913?

A. In 1905 I saw the time they landed the "Garnet" with that load—

Q. Of what?

A. Of timbers for the Perseverance.

Q. The "Garnet" was a boat belonging to the Wrangell sawmill? A. Yes, sir.

Q. When was that?

A. I think that was in 1905, along in the summer-time.

Q. Where, with reference to the present gridiron, did the "Garnet" land?

A. As near as I could tell you where I marked it there.

Q. Landed right on the platform?

A. No, the platform was merely piles set up and capped over like this was a platform (indicating) and landed over there and rolled timbers off on the platform.

Q. Landed the scow on the beach and then unloaded it? A. Yes.

Q. Did they land it on that gridiron that Mr. James had? A. No, that was way off.

Q. How far apart were these two structures at that time? A. I couldn't tell you just exactly.

Q. About a hundred feet?

A. May have been, more or less, I never measured it. [345—305]

Q. Do you know who occupied this little platform?

A. Which little platform?

Q. The platform erected by Mr. Scott?

(Testimony of Edward Webster.)

A. Well, I saw them unloading timber on there for the *Perseverance*.

Q. And that timber came from where?

A. Wrangell.

Q. Did you ever see any of Mr. James' lumber or timber on there? A. No.

Q. Did you say Mr. James was landing lumber there at the same time this platform was being used?

A. I didn't say any such thing, because I didn't see it.

Q. When was the street put down there?

A. In 1906; started in September and finished in November.

Q. Do you know when the present gridiron was built? A. Yes, sir.

Q. When was it built? A. In 1906.

Q. What time in the year?

A. Along, I think it was summer, in June, working on it.

Q. June, 1906? A. Yes, sir.

Q. Do you know whether or not any mill timbers from Wrangell were landed there at that time?

A. No, sir.

Q. Do you know whether or not Mr. James was doing any business with the *Perseverance* at that time? A. No, I don't.

Q. Do you know whether or not he was furnishing lumber or material to the *Perseverance Company*?

A. I do not.

Q. Are you interested with Mr. James in the saw-mill? [346—306]

(Testimony of Edward Webster.)

A. No, sir.

Q. You are a partner of his in the pile-driver?

A. Yes, sir.

Q. You laid your pile-driver up there on the beach one winter? A. Yes, I did.

Q. Do you know how long the construction period continued at the Perseverance Mine? A. I do not.

Q. Do you know when they started to build the mill?

A. Well, I know about what time they started to build the mill, but the dates I don't know. I have got no records of it.

Q. How long did it take them to build the mill?

A. I don't know.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Do you know who employed Mr. Scott to build this platform?

A. I do not; I never asked him.

Q. Do you know Charles E. Davidson?

A. I know him, yes, sir.

Q. Do you know anything with reference to his occupying that ground as receiver for the Willson and Sylvester Estate? A. I know he was, yes, sir.

Q. Do you know whether or not as such receiver he ever occupied this platform and the ground surrounding it?

A. I don't know that he occupied it.

(Testimony of Edward Webster.)

Q. Don't know anything about it? A. No.

Q. All you know is that lumber was brought from Wrangell and landed there? [347—307]

A. Yes, sir.

Q. For the Perseverance Company? A. Yes.

Q. Do you know whether or not, Mr. Webster, the agents for the Pacific Coast Company had supervision over this property in 1900?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, as calling for a conclusion whether or not they had supervision, and not proper cross-examination.

The COURT.—Objection sustained on the last ground.

Q. (By Mr. BAYLESS.) Do you know whether or not, Mr. Webster, the Pacific Coast Company did anything with reference to looking out for that ground there?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

Q. (By Mr. BAYLESS.) Mr. Webster, just about how much of this 113 feet in dispute in this case did Mr. James actually occupy in 1904?

A. I do not know.

Q. Did he always land in one place?

A. Yes, because it was pretty rocky on the beach there and he had quite a place cleared up there.

Q. You do not know who cleared it up there?

A. No, I didn't say that.

Q. Did you ever see any stakes to indicate the boundary of the ground claimed by Mr. James?

A. No.

(Testimony of Edward Webster.)

Q. Do you know whether or not he had this beach staked out? A. I do not.

Q. You do not know how much ground he actually occupied in 1904? A. No, I do not.

Q. Do you know how frequently he came over here and landed vessels? A. I do not.

Mr. BAYLESS.—I think that is all. [348—308]

Redirect Examination.

(By Mr. GUNNISON.)

Q. Which end of the timbers in that small—in the old gridiron were embedded in the beach, the upland side of it—the upland end of it?

A. The upland end of it.

Q. Which was the forty-foot distance and which was the fourteen-foot distance?

A. The fourteen was the width of it.

Q. You mean this fourteen feet along the—

A. Parallel with the beach.

Q. And forty feet running out from the beach out-shore? A. Yes.

Q. How much ground would be occupied in landing a scow on this gridiron?

A. Well, that would be according to the bigness of the scow—size of the scow.

Q. I don't mean when resting on there, but how much room did it take to land it on there under ordinary conditions?

A. Well, ordinary landing of a scow—of course, to maneuver a scow good you would want at least sixty feet anyway.

Q. So that the least ground, even with that old

(Testimony of Edward Webster.)

gridiron, was sixty feet?

Mr. BAYLESS.—Object to that as leading, argumentative, and not proper redirect examination.

The COURT.—Well, the witness has just stated it and he has asked it over again.

Mr. GUNNISON.—It may be a repetition, your Honor.

The COURT.—I know it is a repetition—objection overruled.

A. Yes. [349—309]

Q. Now, you say you saw the “Garnet” land Perseverance timbers in the summer of 1905?

A. Yes, sir.

Q. How many times did you see the “Garnet” land there?

A. To my recollection, I don’t think she came but once for the timbers.

Q. That is the best of your recollection, that she was there once? A. Yes, sir.

Q. In 1904 you say you drove these two piles?

A. Yes.

Q. Now, what else was there in the line of those piles? A. What do you mean?

Q. In the way of piles or posts.

A. There was nothing but a pile that I had driven in 1887.

Q. Where was that? A. That was on this line.

Q. Where, with reference to the beach?

A. Yes, up the beach. We got up just as high as we could get up, but it was below where the street is now.

(Testimony of Edward Webster.)

Q. Was there one or two piles? A. Two piles.

Q. Two piles driven like a dolphin? A. Yes.

The COURT.—Q. Was it on upland or tide lands?

A. No, it was tide lands, because we drove them with a pile-driver.

Q. I mean the two piles you say were there when you went there?

Mr. GUNNISON.—The 1887 piles.

A. There were none there—I drove those.

Q. (By Mr. GUNNISON.) Did you drive them on the upland or— A. It was tide land.

Q. How near the line of medium tide was it? [350—310]

A. It would be about the minimum—the 18-foot tide.

Q. That was as high as you could float the pile-driver on ordinary high tide?

A. Yes, about an 18-foot tide.

Q. So that it was close to the line of high tide, mean high tide?

A. No, the mean high tide would go a good deal higher, because mean high tide would be twenty-eight feet.

Q. That would be the mean high tide?

A. Well, it runs 18, 26 and 28.

Q. Eighteen is the minimum high? A. Yes.

Q. But you went as high as you could go on a minimum high tide?

A. That was the best of my recollection; I knew it wasn't an extreme high tide.

Q. Counsel has asked you if Mr. James had any

(Testimony of Edward Webster.)

marks on the ground; was it marked by anyone else that you know of? A. In what year?

The COURT.—Just a moment. That is not re-direct examination of anything I know of. It would open up another cross-examination.

Mr. GUNNISON.—Your Honor, I don't think I asked Mr. Webster anything about Mr. James marking the ground. Mr. Bayless did ask him if he had the ground marked.

The COURT.—That is all right. You asked him whether anybody else had any markings there.

Q. (By Mr. GUNNISON.) How far were the two piles—the 1887 piles—from a point where you could reach them on the upland without going into the water; is that clear to you? How far away were the two 1887 piles, as distinguished from the two 1904 piles, from a point to which you could get on the upland without getting into the water at ordinary high tide?

A. I would say about forty or forty-five feet. [351—311]

Q. Where you could get at it? A. Yes.

Q. How far were they from where the ordinary high tide reached?

Mr. BAYLESS.—We object to that for the reason that you have not qualified him as an expert tide witness.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Are those two piles on the beach now?

A. I haven't seen them for some time—I could tell,

(Testimony of Edward Webster.)

but I haven't noticed them for some time.

Q. Has the contour of the beach changed since those were driven, so that the tide doesn't come in as far as it did?

A. No, I don't think so.

Mr. BAYLESS.—We object to this as purely argumentative and leading.

A. No, I don't think it has; I don't think there is any change. There may have been a little stuff in there that would block it on a lower tide, but not on a higher tide.

Q. Mr. Webster, how much of those piles, those 1887 piles, were exposed at low water?

A. You mean out of the ground?

Q. Yes.

A. They were all out.

The COURT.—Out of the ground?

Mr. GUNNISON.—Q. I mean how much could you see at low water?

A. The piles were about five or six feet outside.

Q. And at half a tide they would all be exposed?

A. Yes.

Mr. GUNNISON.—That is all.

(Witness excused.) [352—312]

[Testimony of Lloyd Winter, for Plaintiff.]

LLOYD WINTER, a witness called and sworn in behalf of the plaintiff, it having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and occupation.

A. Lloyd V. Winter, photographer, Juneau, Alaska.

Q. When did you first come to Juneau?

A. In the spring of '93.

Q. What has been your occupation since that time?

A. Photographer.

Q. Are you acquainted with the old Carroll wharf in Juneau? A. Yes.

Q. Are you acquainted with the property surrounding that wharf?

A. Yes, I have been there a good deal.

Q. Where were you residing in Juneau when you first came here?

A. On Front Street, just opposite Gross' Theatre.

Q. Did you have any business down around the Carroll wharf?

A. I used to sell photographs and souvenirs down there.

Q. Did you have a stand there? A. Yes.

Q. Did you ever see any boats dock at the Carroll dock? A. Yes, I met them there.

Q. Are you acquainted with the way those boats used to tie up at the dock?

(Testimony of Lloyd Winter.)

A. I have seen a good many come in.

Q. Just explain to the Court how these vessels tied up to the dock.

A. I think the "Queen" was about the only boat I ever saw tied up at that old wharf, but she was so much longer than the breast of the wharf that they had lines from the bow and stern to the beach. [353—313]

Q. Do you know whereabouts on the beach these lines were tied?

A. I don't know just the distance or the point.

Q. You have seen that done, have you?

A. Oh, yes.

Q. I hand you a photograph and ask you to identify it and tell me who took it.

A. That was made by my former partner.

Q. About what year?

A. Mr. Lamdiken, in 1890 or '91.

Q. Before you came here? A. Yes.

Q. Did you ever see a boat tied up to the wharf?

A. That was the usual position that the "Queen" was tied up at that wharf.

Mr. BAYLESS.—We offer this photograph in evidence.

Q. Mr. Winter, how long was the old Carroll wharf used as a wharf; do you know?

A. I could not tell the exact date.

Q. Do you know whether or not that practice was followed—mooring vessels up to the dock by means of head and stern lines—as long as the wharf was used as a wharf?

(Testimony of Lloyd Winter.)

Mr. GUNNISON.—We object to that question as leading and further that there is no evidence here of a practice.

The COURT.—Yes, I think you must omit the word “practice.”

A. I don’t recall at this time of seeing any other boat; there were so few boats coming here at that time.

Q. (By Mr. BAYLESS.) How frequently did you see the “Queen” tied up there at the dock in that way?

A. She came about every fifteen days during the excursion or the summer season.

Mr. BAYLESS.—That is all. [354—314]

The COURT.—Is there any objection to the introduction of the photograph?

Mr. GUNNISON.—Just a moment. We object to it in the first place as not having been taken by Mr. Winter and not properly identified; in the next place, that it doesn’t show the way the boat is moored at all.

The COURT.—I don’t know what it shows, but it is offered as illustrative of the testimony of the witness by showing what he means by running lines ashore. If it doesn’t show it, it is the plaintiff’s own loss. Objection overruled.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked “Plaintiff’s Ex. #23.”)

(Testimony of Lloyd Winter.)

Cross-examination.

(By Mr. GUNNISON.)

Q. Who did you say this photograph was taken by?

A. Mr. George Lamdiken, a former partner.

Q. Is there anything on this to indicate that—anything on the print to indicate that?

A. No, except just the title of the photograph.

Q. How do you know it was made by him?

A. I bought a half interest with Mr. Lamdiken, and in going over the stock he informed me at that time that that was his negative and was made by him the year prior to my coming.

Q. Then you weren't here when it was made?

A. I wasn't here.

Q. And all you know about it is what Lamdiken told you? A. Yes; it was a portion of his stock.

Q. What vessel is this a photograph of?

A. Steamship "Queen." [355—315]

Mr. GUNNISON.—We move to strike this on the ground that the witness testifies now that his own knowledge as to when it was taken and whom it was taken by is hearsay.

The COURT.—The photograph was not admitted as a correct representation of anything except that the witness says that lines were run ashore in a certain way,—“this is the way I have seen lines run ashore.” Suppose the witness had drawn it out on paper and said, “They ran lines ashore this way.” Instead of that, he produces a picture with a drawing of it.

Mr. GUNNISON.—Very well; we save our exception.

(Testimony of Lloyd Winter.)

Q. How many times did you see the "Queen" moor at that dock, Mr. Winter?

A. I believe the "Queen" averaged a trip to Juneau about every two weeks beginning with that first year of 1903 all that summer and the following summer, I believe.

The COURT.—Q. 1893 or 1903?

A. 1893; and I believe she continued landing at that wharf in 1894. I used to carry a table and show cases down on the wharf and sell my souvenirs and photographs there.

Q. (By Mr. GUNNISON.) Do you know what the length of the "Queen" was?

A. I haven't any idea.

Q. How did they take these lines ashore?

A. I don't know just what their system was.

Q. Did she always land like that?

A. Generally in that position. Once in a while she would make a long turn and come the other way.

Q. Usually made a starboard landing?

A. Similar to that.

Q. Will you mark on that photograph where the other end of that stern line was moored—the land end of that stern line?

A. I couldn't tell you. [356—316]

Q. As a matter of fact, it is moored to this building or this framework? A. I couldn't answer that.

Q. You recognize that old skeleton or framework or building there? A. Yes, sir.

Q. How long was that there?

(Testimony of Lloyd Winter.)

A. That was there for a couple years.

Q. During these two years that the "Queen" was landing?

A. That building was standing as it is now when I came here, without a roof. I remember that.

Q. Well, now, was the "Queen" moored to that building every time? A. I couldn't answer that.

Q. Do you know where the land end of the "Queen" was moored each time? A. No, sir.

Q. Where were the spring lines carried—the stern springs?

A. To the wharf and also to the shore, post of some sort.

Q. Now, when the "Queen" made a port landing, where was her stern line carried?

A. I couldn't tell you.

Q. Did you ever see the "Queen" make a port landing there?

A. I couldn't tell you whether it was a port or starboard; I didn't go down to see how they tied up.

Q. Did they always tie that way even in calm weather with a stern line ashore?

A. I couldn't answer to that.

Q. You mean that every time the "Queen" came in port, she tied with—made a starboard landing and tied with the stern line ashore, do you?

A. That was a common feature with the "Queen" tying up to this shore, and I recall that because they always had difficulty in tying to that shore there. [357—317]

Q. Why difficulty?

(Testimony of Lloyd Winter.)

A. On account of the breadth of the dock. Because the boat was so much longer than the dock.

Q. How long was the "Queen"?

A. I should judge the "Queen" was 300 feet long.

Q. If she made a port landing—you say she sometimes made a port landing?

A. I don't want to testify as to that.

Q. You don't mean to say that she always made a starboard landing? A. I am not testifying to that.

Q. You mean that when the stern of the "Queen" projected a long distance over the face of the wharf that they tied with a stern line to the shore?

A. I have frequently seen them do that.

Q. That is as strong as you put that?

A. Often.

Q. But you don't mean to say they did it every time?

A. Every time I was down there and I was down there every time during the two or three years.

Q. But you don't mean to say she landed that way and tied up that way every time?

A. Well, they had difficulty in getting the bow and stern lines fast to the beach. She was the only large vessel coming up here in those days.

Q. Was she the only vessel that landed there at that dock in those days?

A. No—the "City of Topeka" and the "Alki."

Q. How did they tie up?

A. I couldn't tell you.

Q. The reason this is pretty clear in your mind is because this refreshes it? [358—318]

(Testimony of Lloyd Winter.)

A. No, I was on that dock at that time. I had business on that wharf and I remember how often we had to wait to see the "Queen" tied up. The "Topeka" and the "Alki" were rather short.

Q. They tied up quickly? A. Yes.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did you have any occasion to go down to see the "Topeka" and the "Anchon" or the "Alki" tie up?

A. No, not the "Anchon"—the "Anchon" was wrecked.

Q. I am talking about the "Alki"? A. Yes.

Q. Did you ever see that ship tie up there?

A. Yes.

Q. Do you know whether or not she ran her lines ashore?

Mr. GUNNISON.—We object to that as not proper redirect examination.

The COURT.—Well, you have asked him about other vessels being tied up the same way in your cross-examination. Objection overruled.

A. I don't recall that.

Q. (By Mr. BAYLESS.) Did you have as much occasion to observe the "City of Topeka" and the "Alki" as you did the "Queen"? A. No.

Mr. GUNNISON.—We object to that question as leading, argumentative, suggestive, incompetent, irrelevant, and immaterial, and not proper redirect examination.

(Testimony of Lloyd Winter.)

The COURT.—All the objections are overruled.
[359—319]

Q. (By Mr. BAYLESS.) Do you know what these head and stern lines were attached to on the beach?

A. I don't believe I paid much attention to that; I don't recall how they were fastened.

Mr. BAYLESS.—That is all.

Recross-examination.

(By Mr. GUNNISON.)

Q. Do you know where on the beach they were tied up? A. I do not.

Q. Whether close in to the wharf or far out from the wharf? A. They were away from the wharf.

Q. How far away?

A. I couldn't tell you the distance.

Mr. GUNNISON.—That is all.

(Witness excused.) [360—320]

Mr. BAYLESS.—If the Court please, I would like to ask Mr. Ewing how long the "Queen" was?

The COURT.—Very well.

[**Testimony of S. H. Ewing, for Plaintiff (Recalled).**]

S. H. EWING, a witness sworn in behalf of the plaintiff, being recalled to the stand, the plaintiff having been permitted by the Court to reopen its case in chief, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Ewing, do you know the length of the "Queen"? A. 331 feet.

(Witness excused.)

The COURT.—Is that all the testimony in chief?

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We desire to reopen our motion.

The COURT.—Very well; the motion is denied. Proceed, Judge Gunnison, with your case. [361—321]

[Testimony of Frank Bach, for Defendant.]

FRANK BACH, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. What is your name? A. Frank Bach.

Q. Where do you live? A. Douglas Island.

Q. Do you know George E. James? A. Yes, sir.

Q. How long have you been acquainted with Mr. James?

A. Since about '90; somewhere in that neighborhood.

Q. Are you acquainted with the beach line here in the vicinity of Juneau? A. I am.

Q. Do you know that particular piece of beach on which Mr. James' present gridiron is situated?

A. I do.

Q. When did you first become acquainted with that piece of beach so far as your present recollection serves you? A. '83—1883.

Q. Did you know that piece of beach land in the year 1900? A. I did.

Q. Did you in 1900 have any occasion to visit it?

A. I walked down past the wharf one day and I seen Mr. James—

(Testimony of Frank Bach.)

Mr. BAYLESS.—We object to the balance of the answer.

The COURT.—Just answer yes or no.

A. I did.

Q. (By Mr. ROBERTSON.) And what was the occasion of your visit to it? [362—322]

Mr. BAYLESS.—We object to that as immaterial.

The COURT.—Objection overruled—it is preliminary, I suppose.

A. I walked down towards the wharf and went past and see Mr. James down there tying up—

Mr. BAYLESS.—Object to the balance of this testimony.

Q. (By Mr. ROBERTSON.) You say you went down past the wharf on the beach—what did you see going on on this piece of beach land at that time?

A. I seen Mr. James tying up a raft of lumber.

Q. Was that a raft or a scow of lumber?

A. Raft.

Q. That was in the year 1900? A. Yes, sir.

Q. What time of the year?

A. Oh, I don't just exactly remember—in August, I think.

Q. And when did you next—after the year 1900 did you have occasion again to visit that piece of beach land? A. I have.

Q. Have you ever had occasion to visit it at any time with Mr. James? A. I did.

Q. Just state the nature of those visits with Mr. James and the approximate times.

A. In 1900 Mr. James run the sawmill at Sheep

(Testimony of Frank Bach.)

Creek. In the fall of it he built a sawmill on Douglas Island and Mr. James and me were pretty good friends and he came in one evening and says, "I am taking a raft of lumber over, come on and go with me" and I went with him.

Q. When you say "come over" what do you mean—where did you come to?

A. To this piece of land.

Q. Where the present gridiron is located?

A. Yes, sir. [363—323]

Q. What, if anything, did you bring there?

A. Sometimes a scow and sometimes brought a raft.

Q. During how many years, or what parts of years, did you make such occasional visits to this particular piece of beach land?

A. Right up to the present time.

Q. And what was the last occasion you had to visit it with a raft of lumber belonging to Mr. James, or a scow of lumber?

A. Three years ago I went to work for Mr. James and I ran—and I fetched scows and rafts over here myself.

Q. Where did you land them?

A. On that gridiron.

Q. Then during the period from 1900 up to 1911 each year you had an occasion to visit this particular piece of beach land, as I understand it?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

(Testimony of Frank Bach.)

A. I think it was in 1912 when I was working for Mr. James.

Q. Then from 1900 up to 1912, during all the intermediate years, you say you did or did not have occasion to visit this particular piece of beach land?

A. I did.

Q. And I also understood you to say that during each one of those years you had occasion to come over with a raft or scow of lumber?

A. I used to come over with him.

Q. How many times would you think altogether that you visited that particular piece of beach land with scows of lumber belonging to Mr. James? I don't expect you to state definitely, but approximately.

A. Probably a hundred and fifty times.

Q. Probably a hundred and fifty times?

A. Yes. [364—324]

Q. Do you know the year that Mr. James' present gridiron was erected there? A. In 1906.

Q. Do you remember about what time of the year?

A. In the spring.

Q. Mr. Bach, referring your attention to the years—say to the period between September, 1901, and September, 1903, will you state what, if anything, you saw on that particular piece of beach land with regard to piling or piles? A. There was no piles.

Q. There were no piles there? A. No.

Q. And you are positive of that?

A. I am positive, yes, sir.

Q. Did you visit that piece of beach land at the var-

(Testimony of Frank Bach.)

ious stages of the tide or not—what I mean is, have you been there at various stages—

A. Yes, I come over here when it was low tide and anchored and got the lumber up on high tide.

Q. And you say there was no piling on there during the period from September, 1901, to September, 1903? A. Not that I seen any.

Q. Calling your attention specifically to what at this time would be the easterly end of the particular piece of land in controversy, was there a pile or not at about half way between high tide land and low tide land between September, 1901, and September, 1903?

A. I did not see any.

Q. If there had been one there do you think you would have seen it? A. Most assuredly.

Q. Do you remember whether or not there was any structure on this [365—325] piece of beach land that was used by Mr. James prior to the time the present gridiron was built?

A. There was a little platform up towards the wharf.

Q. Towards the wharf or the present street?

A. Up towards the wharf.

Q. That is, on the side towards—the sawmill side of this piece of land? A. Yes.

Q. And about how large was that platform?

A. I don't just exactly remember.

Q. Approximately?

A. It was big enough to unload lumber on.

Q. Who used that little structure—who did you see using it, if anybody?

(Testimony of Frank Bach.)

A. I seen the "Garnet" from Wrangell laying alongside of it.

Q. Did you ever see anybody else use it?

A. No.

Q. Before Mr. James built his gridiron there, Mr. Bach, what, if anything, did he have on this piece of beach land there?

A. He had a little platform there and there was some timbers used to lay the scow and raft on there so that when the tide went out it would settle down.

Q. What year was it you first saw that little platform being used by Mr. James?

The COURT.—Well, now, gentlemen, you are liable to get the Court confused—the upper Court confused by the indiscriminate use of the words "platform" and "gridiron." There is no testimony that I know of that Mr. James used any platform. Are you not talking about the first gridiron?

Mr. ROBERTSON.—I am talking about the first, or little, gridiron, from the old platform. [366—326]

The COURT.—Well, keep the distinction in your question, so you will not get it mixed up.

Q. (By Mr. ROBERTSON.) State what year it was you first saw Mr. James using the old, or first, gridiron, on that beach—just approximately, I don't expect you to give the exact date.

A. I couldn't even give you the exact year. The beach was pretty rocky there and I guess it was cleaned up, and I don't know whether it was 1902, 1903, or 1904; I couldn't say.

(Testimony of Frank Bach.)

Q. In the year 1904 when Mr. James brought his scows over there, did he tie up the scow to anything?

A. There were a couple of piles there.

Q. And about where were those piles driven with reference to the first gridiron?

A. Well, right alongside of it, only down farther.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Bach, I don't think you testified to anything prior to 1900, did you? A. No, sir.

Q. Were you working for Mr. James in 1900?

A. No, sir.

Q. What was your occupation then?

A. Merchant.

Q. City Marshal in Douglas?

A. No, merchant.

Q. At Douglas? A. Yes, sir.

Q. How did you happen to come over here in 1900?
[367—327]

A. How did anybody else happen to come over here—when I had business over here.

Q. Did you have business over here?

A. It was about a boat with Dutch Henry.

Q. And you came over on a raft—Mr. James' raft?

A. No, I didn't come over with Mr. James' raft; I came over on the ferry-boat and walked down there.

Q. Did you see any boundary lines that would indicate how much ground Mr. James was claiming there on the beach at that time?

Mr. ROBERTSON.—Object to that as not proper

(Testimony of Frank Bach.)

cross-examination. I haven't gone into anything except the use of the land and what structures he was using, if any, on the land.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. No.

Q. (By Mr. BAYLESS.) Any posts?

A. No.

Q. You saw James unloading a scow of lumber there?

A. The wagon come right alongside and they loaded it up.

Q. It was unloaded from the scow?

A. From the scow and from the rafts too.

Q. Well, how much space did he occupy at that time? A. About the length of a raft or scow.

Q. How big was it?

A. Oh, there were scows in there about forty feet long and he brought rafts in that were probably longer.

Q. How many rafts did you see in 1900?

A. I seen one of them which come up from Sheep Creek; I see him there with it.

Q. Did you see anything else in 1900?

A. I did not.

Q. Do you know whether or not that raft was landed on the gridiron— [368—328] where the gridiron is now?

A. Approximately about there.

Q. Might be a little this way or a little the other way? A. Maybe.

(Testimony of Frank Bach.)

Q. Any piles there at that time?

A. I didn't see any.

Q. That was in the summer of 1900? A. Yes.

Q. That was the only time you saw a raft or scow there in 1900? A. That was the only time.

Q. How about in 1901?

A. In 1901 he ran the sawmill over there in Douglas and I used to be around the sawmill and sometimes he would say, "Come along with me to Juneau with the raft," and I went along with him.

Q. How frequently did you go across the channel to this piece of beach in 1901?

A. Probably about five or six times.

Q. Always landed in the same place?

A. About the same place, yes.

Q. How close to the same place—forty or fifty feet on either side?

A. I couldn't tell you how close it was—just about the same place.

Q. Was there any dock that you landed at?

A. No, landed there right on the beach and just in about the same place.

Q. Are you sure you landed in the same place?

A. There was a great big rock down there and I believe it is down there yet, and it was right close to that rock.

Q. Always landed close to this rock? A. Yes.

Q. Was that in the summer-time or winter time of 1901? A. Summer-time. [369—329]

Q. Did you ever see any small boats land upon that beach?

(Testimony of Frank Bach.)

Mr. ROBERTSON.—Object to that as not proper cross-examination.

Q. (By Mr. BAYLESS.) Did you ever see anybody else using that beach in 1900 and 1901?

A. No, I couldn't say. I would just come over and go right back again.

Q. You would just come over, land, and go right back? A. Yes.

Q. Do you know anything about it in the winter of 1901? A. No, I wasn't over here.

Q. Well, in 1902 were you on Douglas Island then?

A. Yes.

Q. As a merchant there? A. Yes, sir.

Q. Do you know whether or not Mr. James landed scows or rafts on this property in 1902?

A. Yes, sir.

Q. How do you know it?

A. I was a pretty good friend of Mr. James and used to go down to see him when I closed up the store, and he would say: "Well, Frank, I have got to take a raft over; come along," and I went.

Q. How long would it take to unload?

A. Didn't unload—just brought it there and—

Q. Go back on a gas boat?

A. Yes, when we had one, and if we didn't, went over on the ferry.

Q. How often did you come over in 1903?

A. Oh, maybe about twelve, fifteen times or so.

Q. You spent considerable of the summer-time on the water? A. Yes.

Q. Did you see any other occupants of that beach

(Testimony of Frank Bach.)

in 1903? A. Not on that place. [370—330]

Q. In 1900, 1901, 1902, and 1903 did you ever examine that beach for sunken piles or old piles?

A. I had no occasion to examine it.

Q. Do you know whether or not there were other piles near where the Young wharf is now?

A. A couple of them there—used to tie up to those.

Q. You didn't do that in 1901, did you? A. No.

Q. Do you know whether there were any old piles between high and low water along the line of the present Young wharf in 1900 or 1901?

A. I never seen any.

Q. Will you swear they weren't there?

A. I wouldn't swear, but I never seen any.

Q. Did you examine that property for old piles?

A. No.

Q. It wasn't any part of your duty as Mr. James' guest to scrutinize that beach for old piles, was it?

A. No, sir.

Mr. ROBERTSON.—Object to that as being argumentative.

Q. (By Mr. BAYLESS.) In 1904 were you living on Douglas Island? A. Yes, sir.

Q. And did you come across with Mr. James in the same old way? A. Yes, sir.

Q. How often did you come across there?

A. Oh, I don't know; I can't just tell you exactly how often.

Q. About how often?

A. Probably fifteen or twenty times.

Q. About as often in 1904 as you did in 1903?

(Testimony of Frank Bach.)

A. Yes, somewhere around there.

Q. Was there any particular reason why you would remember coming [371—331] over in 1903 or 1904? A. No, no particular reason.

Q. Did you come over with Mr. James on his rafts and scows each year from 1901 down to the present?

A. No, not always.

Q. Did you come over each year? A. Yes, sir.

Q. Did you see any structures on the beach in 1904? A. There was a platform there.

Q. In 1904?

A. I think it was in 1904 or 1905, I don't remember.

Q. You are not sure? A. No.

Q. Then if the testimony should show that it was in 1905, you would probably agree with it?

A. Yes, sir.

Q. Well, that is the testimony. Do you know who occupied that platform? A. No, I do not.

Q. Did you say you saw the "Garnet" from Wrangell tied up at that platform? A. Yes.

Q. Did you see any of Mr. James' scows unloading on that platform? A. I have not.

Q. Were there any other structures on the beach during the time this old platform was there?

A. Any other structures?

Q. Yes, any other structures? A. Which way?

Q. Either way on this piece of property that is now claimed by Mr. James? A. No. [372—332]

Q. There wasn't any there at that time? A. No.

Q. Well, how long did that old platform stay there?

(Testimony of Frank Bach.)

A. Why, I believe it fell down that winter.

Q. The winter of 1905? A. Yes.

Q. Did you see it fall?

A. No; she wasn't there next year.

Q. Were you over there in the year 1905?

A. Down here?

Q. Yes. A. I was there.

Q. What happened in the spring or summer of 1906?

A. Mr. James put a big gridiron in there.

Q. In the very same place where the platform had stood? A. No.

Q. How far away from it?

A. Well, I don't just exactly remember. They put it just about the same place as the old gridiron was.

Q. Where the old platform was?

A. No, the old gridiron.

Q. Where was that old gridiron with reference to the platform?

A. It was up towards the wharf.

Q. Which wharf, the Carroll-Murray wharf?

A. Yes.

Q. Let us get this straight; was the gridiron between the platform and the Carroll-Murray wharf, or was the platform between the old gridiron and the Carroll-Murray wharf? A. How is that?

Q. Was the old platform between the old gridiron and the Carroll-Murray wharf, or was the old gridiron between the platform and the Carroll-Murray wharf? [373—333]

A. It was on the right-hand side.

(Testimony of Frank Bach.)

Q. Well, where was it?

A. Like this; the platform was here—the gridiron—and the platform was up here towards the Carroll-Murray wharf. (Indicating.)

Q. The platform was close to the Carroll-Murray wharf? A. Yes.

Q. And the old gridiron on down towards the sawmill? A. Yes, sir.

Q. That was the position? A. Yes, sir.

Q. Did you ever work for Mr. James?

A. I did.

Q. When did you work for him? A. In 1912.

Q. You are not working for him now, are you?

A. No, sir.

Q. Do you know who occupied that old platform?

A. I do not; I did not know.

Q. Do you know whether the Perseverance Company occupied it? A. I couldn't tell you.

Q. Do you know whether that lumber from Wrangell was for the Perseverance mill?

Mr. ROBERTSON.—We object to that. The witness has not testified about any lumber from Wrangell. It is not proper cross-examination.

The COURT.—I don't recall any such testimony.

Q. (By Mr. BAYLESS.) Didn't you say the "Garnet" came up from Wrangell with lumber and unloaded at the old platform? What did the "Garnet" have on board of her?

Mr. ROBERTSON.—Object to that. There was nothing said on direct examination about anything on board of her.

(Testimony of Frank Bach.)

A. She had lumber on her. She was a lumber schooner—lumber boat. [374—334]

Q. It wasn't a scow?

A. A regular lumber schooner, I think it was, to carry lumber from Wrangell up here.

Q. Did she have her own power? A. No.

Q. Are you sure that wasn't a scow?

A. Well, it was a regular schooner—had higher sides on her than a scow.

Q. Do you know whether or not that lumber was for the Perseverance mill or not?

A. No, I do not know who it was for.

Q. Do you know whether or not the Perseverance mill was being built in 1905? A. I believe so.

Q. Do you know how long it took to build the mill?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant, immaterial, and not proper cross-examination.

The COURT.—That is going too far, Mr. Bayless.

Q. (By Mr. BAYLESS.) Do you know whether or not anybody else landed on that beach while Mr. James was landing there with his scows?

A. There might. If I brought a scow, it was just went in and went out again.

Q. You do not know anything about the property except the times you came over with Mr. James?

A. Yes.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. I understood you to say that you couldn't swear

(Testimony of Frank Bach.)

that there was an old pile there between September, 1901, and 1903, but can you swear positively, Mr. Bach, that you didn't see such a pile [375—335] there—do you swear that you didn't?

A. I say I didn't see no such a pile.

Q. And I understood you to say that you were there at various stages of the tide? A. Yes.

Q. Now, the old gridiron, as I understand, was the place Mr. James used at that time—prior to the present gridiron? A. Yes.

Q. And what you call the old platform was what you on one occasion saw the "Garnet" tied up in front of? A. Yes.

Q. Was Mr. James using the old gridiron at the same time this little platform was in position on the ground? A. Yes.

Mr. ROBERTSON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you ever see the platform in use?

A. No, I didn't see it in use.

Q. Did you ever see any rafts or scows of Mr. James landed on that beach on the old gridiron while the old platform was standing on the ground?

A. I certainly did, yes.

Q. What year was that?

A. It was in 1904 or 1905; I don't remember them dates.

Q. Well, how often did you see that done?

A. Oh, different times; I can't remember just how often and you couldn't, either.

(Testimony of Frank Bach.)

Q. That was a kind of a vacant beach down there at that time, wasn't it? [376—336]

Mr. ROBERTSON.—Object to that on the ground that it is not proper recross-examination.

A. We also went—

The COURT.—Just a moment. Objection sustained.

Q. (By Mr. BAYLESS.) Will you swear, Mr. Bach, that nobody else used this beach but Mr. James?

Mr. ROBERTSON.—We object to that as not being proper recross-examination.

The COURT.—It is not proper recross-examination, and it would be proper cross-examination, because he never testified to that in chief.

Mr. BAYLESS.—Never testified to what?

The COURT.—That nobody else but Mr. James used that beach.

Mr. BAYLESS.—That is right. I just wanted to get him to say that if he knew.

(Witness excused.)

(Whereupon the Court took a recess for ten minutes.) [377—337]

[Testimony of George E. James, for Defendants.]

GEORGE E. JAMES, a witness called and sworn in his own behalf, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. James, state your name.

A. George E. James.

Q. Your residence?

(Testimony of George E. James.)

A. Douglas at present.

Q. And your occupation?

A. I am in the lumber business.

Q. Are you one of the defendants in this case?

A. I am.

Q. You are the defendant who is still defending the case? A. Yes, sir.

Q. Now, what was your occupation in 1900, Mr. James? A. Sawmill business.

Q. Where were you engaged in the sawmill business?

A. At Sheep Creek and also on Douglas Island.

Q. What time in 1900 did you begin work in the sawmill business at Sheep Creek?

A. The early part of spring and summer.

Q. Will you describe where Sheep Creek is for the purpose of the record; I think no one has specified that so far.

A. Sheep Creek is situated on the left-hand side of the Channel, situated about four miles from Juneau.

Q. On the same side as the City of Juneau?

A. As Juneau.

Q. Now, referring to the piece of tide land in controversy in this suit, please state whether or not you had anything to do with that in the summer or at any time in the year 1900. [378—338]

A. I used it constantly during the first part of the summer of 1900 in delivering lumber.

Q. How?

A. Principally in rafts.

(Testimony of George E. James.)

Q. Did you do anything with reference to the—did you do any work on it and, if so, what?

A. I cleared it of rocks and logs and all the debris that had gathered in there.

Q. Just where, or approximately where, with reference to what is known as the—I will withdraw that—do you know where the old Murray & Carroll wharf, so-called, is situated? A. Yes, sir.

Q. Do you know where Chief Johnson's house is, the old Chief Johnson house? A. Yes, sir.

Q. Do you know where the beach covered by what is now known as the Charles W. Young Dock is situated? A. I do.

Q. Now, where, with reference to these three structures, was the beach which you cleared in the summer of 1900?

A. I cleared up to the C. W. Young—that was known then as the Chief Johnson property, and a space there practically two hundred feet square from high-water mark down.

Q. How did you clear it?

A. By removing the boulders and rocks.

Q. Who worked with you?

A. I had several men in there, one in particular—a man by the name of Biernoth had charge of it.

Q. He is the man who has testified for the defendant? A. Yes, sir.

Q. Over what period of time were you engaged in clearing this?

A. Oh, the first part of that summer—in fact, we did a little [379—339] clearing pretty nearly

(Testimony of George E. James.)

every raft we took up; there would be logs that floated in there.

Q. How did you deliver the lumber at this place?

The COURT.—Do you mean in 1900?

Mr. GUNNISON.—Yes.

A. In rafts.

Q. For how long a period did you deliver from Sheep Creek?

A. All that summer till snow-fly that fall.

Q. You said you were also engaged in the sawmill business at Douglas during that year? A. Yes, sir.

Q. When did that commence?

A. Commenced somewhere in September or October, I think.

Q. And did you deliver any lumber from Douglas to Juneau? A. Very little, if any.

Q. Now, how often did you deliver a raft on this ground during the season of 1900?

A. There was from one to two rafts laying there all the time. I delivered in the neighborhood of fourteen thousand feet of lumber that summer.

Q. At Juneau? A. At Juneau.

Q. Over this beach?

A. Yes, sir, over that same place.

Q. How late in the fall—you said till snow-fall.

A. We operated quite late; I don't remember the month, but it must have been in November, if not later.

Q. Now, during that time, in the year 1900, how often were you on the ground personally?

A. In 1900?

(Testimony of George E. James.)

Q. Yes, sir. [380—340]

A. Oh, for the biggest part of the time—every day—I lived in town and walked back and forth.

Q. You lived in Juneau at that time?

A. Yes, sir.

Q. During that year was this ground or any part of it used by the Pacific Coast Steamship Company or the Pacific Coast Company—by the Pacific Coast Co. or by the Pacific Coast Steamship Co.?

A. Not to my knowledge.

Q. Did any vessels load and discharge freight at the Murray and Carroll wharf during that year, 1900, to your knowledge? A. No, sir.

Q. When you went on this ground did you—I will withdraw that—before going upon this ground and using it as you have testified in the year 1900, did you obtain permission of anyone to do so?

A. I did not.

Q. Did you put it to any use during the winter of 1900 and 1901?

A. I don't remember whether I used it or not.

Q. Where were you engaged in business in 1901?

A. In Douglas.

Q. In the same business? A. Yes, sir.

Q. Did you use this ground—state whether or not you used this ground, this piece of beach land in controversy, in the year 1901? A. I did.

Q. How did you use it? A. In the same manner.

Q. How frequently? A. Oh, quite frequently.

Q. Well, how often—how was lumber delivered, in rafts or scows? A. In rafts and scows both.

(Testimony of George E. James.)

Q. State how you discharged your scows and delivered your lumber there. [381—341]

A. I would leave the scow there and the teams would haul it off; would leave the raft there until it was hauled away.

Q. Then you would lay your raft or your scow on the beach and moor it and they would come and take it away; is that what you mean? A. Yes, sir.

Q. Was there any structure there at the time you went on it in 1900? A. There wasn't.

Q. What was the nearest structure on the beach to you at that time? A. The Carroll wharf.

Q. How far away was that?

A. Oh, I should judge 200 feet—300.

Q. I beg your pardon, I didn't understand you.

A. Probably a little over 200 feet.

Q. From where?

A. From where I was landing.

Q. In the year 1901 was there any structure on this piece of ground in controversy?

A. There wasn't.

Q. And you say you used scows and rafts in that year to deliver lumber? A. Yes, sir.

Q. Over what period of time did your use of this ground run in the year 1901?

A. Over all of the summer and part of the winter.

Q. When did you begin, Mr. James, to use it?

A. That year?

Q. Yes, sir, 1901.

A. Oh, generally we got started in May, sometimes

(Testimony of George E. James.)

the latter part of April; somewhere in the first part of the year.

Q. Beginning of the sawing season?

A. Yes. [382—342]

Q. Now, was the Murray and Carroll wharf used in that year as a landing place for vessels or for discharging vessels? A. No, sir.

Q. How often were you on this ground during the summer personally?

A. Oh, quite frequently; sometimes with every shipment.

Q. Now, how were your rafts and scows moored, Mr. James?

A. Oh, they were moored to piles and shore lines; we had one large rock for an anchor at that time.

Q. For an anchor?

A. Yes, to hold them in a certain place.

Q. In the year 1901 what, if any, piles were there on this piece of ground, or in the immediate vicinity of it?

A. There was two piles in the upper right-hand corner coming in. That was the only piles that was in there until you got up to the old dock.

Q. Those piles on the upper right-hand corner—you mean looking—approaching it from the Channel? A. Yes, sir.

Q. That would be in the southeasterly corner?

A. Southeasterly corner, yes.

Q. Where was that located, if you recollect, with reference to the line of high tide?

A. Why at that time—I should judge they were

(Testimony of George E. James.)

practically in the line of high tide.

Q. What do you mean, extreme high or mean tide, or what? A. Practically extreme high tide.

Q. Was there any pile on a line with those two piles or anywhere within a radius of a few feet on either side of the line of those piles between them and deep water? A. No, sir.

Q. Were there any posts or mounds on that ground or on this piece of tide land used for marking?
[383—343]

A. Not to my knowledge.

Q. What periods or stages of the tide were you on this ground?

A. On all stages of the tide, on high and low.

Q. Did you at any time during your occupancy and use of that ground see any pile—did you at any time during your use and occupancy of that ground up until 1904 see any piles or marks or stakes used to mark boundaries on this ground other than the two piles to which you testify? A. I have not.

Q. Now, in the year 1902 where were you engaged in business? A. On Douglas Island.

Q. And what use, if any, did you put this ground to?

A. For the same purpose—of landing lumber in Juneau.

Q. How often did you use it?

A. I couldn't say; quite frequently.

Q. During that time was the Murray and Carroll wharf used as a landing place for vessels?

A. No, sir.

(Testimony of George E. James.)

Q. Did the Pacific Coast Company use this piece of tide lands which is in controversy here for any purpose?

A. No, sir, I never saw anyone use it in that year.

Q. Did any one else use it besides you, to your knowledge? A. I think not.

Q. Now, in the year 1903 where were you engaged in business? A. In Douglas.

Q. And what about the use of this piece of tide lands? A. Well, same as before.

Q. And what about its use by the Pacific Coast Company or the Pacific Coast Steamship Co.?

A. They didn't use it.

Q. Did you put the ground to any use and, if so, what, in the winter of 1902-3? [384—344]

A. Only for the purpose of landing lumber and I don't remember whether I had my scow moored there in 1903 or not; I hardly think I did. It wasn't a very desirable place to land at that time.

Q. In the winter of 1903 and 1904 did you use this ground? A. Yes, sir.

Q. For what purpose and use?

A. For landing lumber.

Q. And how frequently? A. Quite frequently.

Q. In the spring of 1904 were any improvements put on this ground?

A. Drove some piles in 1904; drove two.

Q. Where were they?

A. They were driven on the line between C. W. Young—or it turned out to be the line; it was un-

(Testimony of George E. James.)

intentional at the time—but driven for the purpose of tying a scow to.

Q. How was the line in which they were driven, at right angles with it or parallel?

A. At right angles.

Q. Are they still there?

A. I think they are still in that line, if I am not mistaken.

Q. Now, to what use did you put this ground in the summer and fall of 1904?

A. For delivering lumber.

Q. In what manner? A. With scows and rafts.

Q. In the same manner to which you have testified as to preceding years? A. Yes, sir.

Q. Did the Pacific Coast Company or the Pacific Coast Steamship Company use the Murray and Carroll wharf as a place for landing their vessels?
[385—345]

A. No, sir—do you mean by vessels, steamers, plying between here and Seattle?

Q. Yes, I mean vessels of the steamship company.

A. No, sir.

Q. Do you know whether or not the buildings on that wharf were put to any use in that or the preceding years and, if so, what?

A. I think there were some tenants there; there was a boat-builder there at one time.

Q. What time was that?

A. I don't remember the years they were in there; I don't remember the years up to the time the sardine factory went in.

(Testimony of George E. James.)

Q. When did that go in?

A. I think that was in 1905.

Q. Well, now, to what other use were the buildings on the old Murray and Carroll wharf structure put in 1904 and prior thereto besides that of a boat-building establishment?

A. There might have been some other tenants in there, I don't know.

Q. You do not know? A. No.

Q. Well, now, to what use did you put this ground in the winter of 1904 and five?

A. Well, for landing purposes.

Q. In the same way and manner in which you have already testified? A. Yes.

Q. Now, when did you commence to use this ground in the year 1905?

A. Early in the spring of 1905.

Q. How did you use it?

A. In the same manner as before, for landing.

Q. Did you put any improvements on it or structures on it? A. I put a small gridiron on in 1905.

Q. State where that was, Mr. James, with reference to the piles which you say were put on there in the preceding year. [386—346]

A. Right alongside of them on the uptown side.

Q. About what were the dimensions of that dock?

A. I don't remember exactly. Somewhere in the neighborhood of eighteen or twenty feet long and four in number.

Q. How were they laid—built? How was each of the timbers laid?

(Testimony of George E. James.)

A. One end was embedded in the ground and one end supported with piles and posts.

Q. You say embedded in the ground—did the eighteen-foot timbers parallel the beach or did it lay at right angles with the beach?

A. I don't just recall how that was at the present time—yes, they were laying paralleling the beach.

Q. Paralleling the beach? A. Yes, sir.

Q. I hand you a map marked Defendant's Exhibit "A," July 18, 1914, and ask you to look at it and state where on that, with reference to the other structures thereon represented or indicated, this small gridiron, or, as it has already been designated in the case, old gridiron was situated. A. Yes, sir.

Q. Is the place where it was indicated and marked "M" correct?

A. The location as to the Chief Johnson line is right, but it is inshore a little farther.

Q. You mean it is—

A. Up this way towards the beach—the gridiron was up here farther.

Q. It was up farther on the ground?

A. Yes; the Davidson gridiron stood right in here.

Q. Mark where the Davidson platform stood.

A. I think there was five. I am not positive about that gridiron running this way. (Witness indicates on map.)

Q. You mean the caps extended—

A. Inshore from—

Q. At right angles from the beach line? [387—347] A. From the edge of this driveway.

(Testimony of George E. James.)

Q. From the inside of where your driveway now is?

A. Yes, sir; my gridiron laid right in here.

Q. Before you mark that, mark this that you put on here as the Davidson platform "D. P."

A. (Witness marks map.)

Q. Now, where did your gridiron lay with reference to that? A. Right in about here.

Q. Where is that—close to the Young line?

A. These piles, I think, are here—stand right in here.

Q. The two 1904 piles you have indicated?

A. Right here.

Q. Mark those "J."

A. (Witness marks map.)

Q. Now, mark the representation of your gridiron "J. G."

A. (Witness marks map.) That is it to the best of my recollection; might be out a little farther or in a little farther.

Q. Now, about what time in the year did you build this old gridiron of yours?

A. Sometime in the first part of the summer; I don't remember the exact date.

Q. When, with reference to the time the Davidson platform was constructed?

A. I think it was about the same time, if not later, as the time the Davidson, or it might have been a little before they built it.

Q. Do you remember about what time the Davidson platform was built? A. Yes, sir.

Q. About what time?

(Testimony of George E. James.)

A. In May and June, I think it was, 1905.

Q. And what was done with that—to what use was it put?

A. For piling lumber onto. [388—348]

Q. Your lumber? A. No, sir.

Q. Whose?

A. I guess it belonged to the Wrangell sawmill; at least they finished it.

Q. How many rafts of lumber were delivered there—I will withdraw that—how was this lumber that was put on there delivered? A. On barges.

Q. How many barge loads were delivered there?

A. Well, it was either five or six.

Q. And over what period of time did its use in that way continue?

A. Oh, from the time it was finished up until along in—I should say August or September.

Q. What was the character of that Davidson platform?

A. It was a structure built with piles set in the ground and capped and braced with bracing.

Q. What do you say as to its character—as to whether it was permanent or temporary in nature?

A. It was of a temporary nature, very frail.

Q. How long did it last?

A. Well, it fell down on the second load they brought in; then it was reconstructed and there was some piles driven in front of it to support it, and it lasted all that summer, but it was gone in the spring.

Q. What spring?

A. The following spring, which was 1906.

(Testimony of George E. James.)

Q. Now, during the year 1905, state whether or not you used this piece of tide land in controversy?

A. In 1905?

Q. In 1905. A. Yes, sir, I used it.

Q. State whether or not you used it—over what period did you use it? [389—349]

A. During all that summer.

Q. That is, the summer this old Davidson platform was put in? A. Yes, sir.

Q. Now, state whether or not the placing of that platform on the ground in controversy prevented you from using this ground?

A. No, it didn't prevent me from using the ground.

Q. You still use it?

A. I still use it. It hindered me some.

Q. Was there a road by this place or did the public road pass this place on the beach at that time, in the year 1905?

A. No, there was no road passed it. There was a road made by me down to it past the Carroll wharf.

Q. What was the nature of that road?

A. Just the common beach; cleared off some boulders and rocks so we could get through there.

Q. You cleared the beach?

A. Yes; made a road to get down to my rafts and scows.

Q. From where?

A. From the front of the wharf.

Q. The Carroll wharf. There was a road down to that, but that was practically as far as the road went? A. Yes, sir.

(Testimony of George E. James.)

Q. The front of it—what do you mean by that?

A. The unland end of it.

Q. Was there a plank road down in that vicinity at that time? A. No, sir.

Q. Well, how far did the plank road extend toward that point?

A. I think the plank road in 1905 extended to the Pacific Coast property—to their line, upper line, in front of Isa Goldstein's building; the street stopped there and there was an incline put in down to the beach. [390—350]

Q. Now, there was no plank road in there that year? A. No, sir.

Q. What was the character of the road down there after you left the plank road?

A. Well, it was a pretty rough beach down there for a piece.

Q. And was it accessible at all stages of the tide?

A. Low tide.

Q. Now, how long did you use that piece of tide lands during that year?

A. Well, all the summer and part of the winter.

Q. And to what use, if any, did you put it in the winter of 1905 and six?

A. I used it some in 1905 for landing purposes.

Q. In the winter? A. In the winter, yes.

Q. In the spring of 1906 what time did you commence to use it again. A. In May.

Q. What was on this ground in controversy when you commenced to use it in May, 1906?

A. Well, my little gridiron was on there.

(Testimony of George E. James.)

Q. Anything else? A. Not that I saw.

The COURT.—Which gridiron?

Mr. GUNNISON.—The little one, the old one, the one that is marked “J.G.”

The COURT.—Q. You say your old gridiron was there in 1906?

A. Yes, sir, that was there in 1906.

Q. (By Mr. GUNNISON.) Was there anything else there?

A. Not that I can remember in the spring when we commenced work.

Q. Was that platform there?

A. No, sir. [391—351]

Q. What had become of it, if you know?

A. It was gone. I think the timbers was hauled up to the—

Mr. BAYLESS.—Just a minute. We object to that as not responsive.

Mr. GUNNISON.—We submit that it is responsive, but if he doesn't know, why all right.

Q. You say it was not there?

A. No, sir, it wasn't there.

Q. What did you do in the spring of 1906 with reference to that ground?

A. I built a new gridiron that spring.

Q. Where?

A. Over the—over part of the little gridiron that I had and in front of the platform that had been built there the year before.

Q. Is that in approximately the same position that the gridiron is upon this “Defendant's Ex. A”?

(Testimony of George E. James.)

A. Exactly the same as the map I had here.

Q. Which I have just shown you? A. Yes, sir.

Q. That is a correct representation of the location of that gridiron?

A. The gridiron built that spring, yes.

Q. How much of that gridiron was built that spring?

A. What is marked "gridiron" was built that spring.

Q. Where was the roadway, the plank roadway, at that time? A. In 1906?

Q. Yes, sir, when you built the gridiron?

A. Over, up there by Goldstein's store.

Q. Did you build the platform behind the gridiron at the same time?

A. There was a temporary platform built behind the gridiron.

Q. Who built it? A. I did. [392—352]

Q. For what purpose?

A. For unloading the scow when I wanted to use the scow before the lumber was hauled away.

Q. Will you describe how that gridiron was built?

A. The gridiron was piles driven in the ground with a pile-driver, sawed off and capped and bolted to the piles so they wouldn't float off, and I think there are seven of them in number.

Q. Seven bents? A. Seven bents.

Q. By bents you mean a row of piles with caps on it? A. Yes, sir, that is a bent.

Q. What is approximately—I will withdraw that—how far apart are the bents—what are the centers?

(Testimony of George E. James.)

A. Ten feet centers.

Q. Ten feet from the center of one bent to the center of the other? A. Yes, sir.

Q. And there are seven bents? A. Seven bents.

Q. How was the platform to which you have referred built?

A. The platform was built with four stringers from set piles inshore from the gridiron.

Q. Parallel with the gridiron?

A. Alongside the gridiron.

Q. And what did you use the gridiron for?

A. For landing scows on.

Q. What did you use the platform for?

A. For unloading lumber off the scows.

Q. On the platform itself? A. Yes, sir.

Q. How was lumber taken from the platform?

A. Loaded on wagons and hauled away. [393—
353]

Q. Where did the wagons stand?

A. Alongside of it.

Q. How long was the gridiron and platform used in that summer? A. All that summer.

Q. Until what time?

A. Oh, it was quite late in the fall that summer—quite a little business during all that fall and winter.

Q. When was the road built through?

A. In 1906.

Q. What time in the year?

A. In October and November; probably commenced in September, latter part of September.

(Testimony of George E. James.)

Q. Did you build the approach to the road that year?

Mr. BAYLESS.—Object to that as leading.

The COURT.—It is leading.

Q. (By Mr. GUNNISON.) When did you build the approach to the road?

Mr. BAYLESS.—Object to that as being suggestive.

Mr. GUNNISON.—Well, I will withdraw that.

Q. State whether or not an approach was built to the road from your platform?

Mr. BAYLESS.—Object to that as being suggestive.

The COURT.—Yes, I think it is suggestive. Ask him how he got from the platform to the plank road.

A. By constructing a driveway and an approach to the street.

Q. (By Mr. GUNNISON.) When was that constructed? A. Early the following spring.

Mr. BAYLESS.—Q. What spring was that?

A. 1907.

Q. (By Mr. GUNNISON.) Returning to the year 1906, was the gridiron and platform which you built used by any person other than yourself?

A. During what period? [394—354]

Q. During the year 1906? A. No, sir.

Q. And how frequently during that year did you use that piece of tide lands and the gridiron?

A. During the summer months; it is hard to say, but practically continuous—as fast as I could run it over and bring it back.

(Testimony of George E. James.)

Q. Where were you engaged in business at that time? A. Douglas.

Q. Have you been engaged in business at Douglas since 1901? A. 1900.

Q. What is the character of the business?

A. Lumber business.

Q. Sawmill? A. Yes, sir.

Mr. GUNNISON.—I am not sure, your Honor, from the testimony of Mr. Swan's whether the question as to whose lumber passed over that wharf in 1906—Mr. Swan testified to it, and I don't want to get anything in the case in chief that would come in our sur-rebuttal.

The COURT.—The testimony of Mr. Swan regarding lumber passing over the wharf?

Mr. GUNNISON.—Well, over that tide land in 1906.

Mr. BAYLESS.—I think he testified that it was the Perseverance lumber, is my recollection of it. I don't remember whether it was in our case in chief or rebuttal, but I have no objection to that question.

Mr. GUNNISON.—I guess that was in rebuttal.

Q. To what use did you put that ground, if any, in the winter of 1906 and seven?

A. It was used for landing purposes and the pile-driver was on there one year; I don't remember whether that was in 1907 or 1908—I think it was in 1907. [395—355]

Q. When did you commence to use this ground and gridiron to which you have testified having constructed, in the year 1907?

(Testimony of George E. James.)

A. In the spring, probably as early as May or probably a little earlier.

Q. I think you testified that in the spring you built the westerly approach or driveway? A. Yes, sir.

Q. That is, the driveway that comes toward town?

A. Yes, sir.

Q. Now, what time in the spring did you build that? A. I think it was in May.

Q. Did that all stand on the ground claimed by you or was part of it on some other ground?

Mr. BAYLESS.—Just a minute. We object to that as being open to all the known objections.

The COURT.—I don't see any objection to that.

Mr. BAYLESS.—There is no testimony here, if the Court please, to show how much Mr. James' claim was at that time.

The COURT.—The question is whether it stood on the ground he did claim.

A. Yes, sir.

The COURT.—Now, just a moment. That answer doesn't answer anything, because the question is: "Did it do this, or did it do that"? What do you mean by "Yes, sir"?

A. It stood on the ground claimed by me.

Q. (By Mr. GUNNISON.) The approach?

A. The approach.

Q. All of it?

A. All of it with the exception of one little piece of the approach.

Q. Where was that?

A. That is inshore in connection with the street.

(Testimony of George E. James.)

Q. Is that represented on this map? [396—356]

A. I don't know; very likely it is.

Q. Just mark that with a pencil, the approach to which you refer, and mark it "V."

A. Just mark down the lines with a pencil so it will be heavier? You want this marked with a "V"?

Q. Mark the section that was on somebody else's land.

A. This is the section here. There is a triangular piece right in here. (Witness indicating on Defendant's Ex. "A.")

Q. (By the COURT.) That is on ground that you don't claim? A. That I don't claim.

Q. (By Mr. GUNNISON.) Whose ground was that?

A. I don't know; I suppose it belonged to the Pacific Coast Company.

Q. Did you get permission to use that from the Pacific Coast Co.? A. Yes, sir.

Q. Please state the circumstances.

A. I asked Mr. Swan if I could tear out the corner of that to connect my driveway.

Q. And what was said about that?

A. "Go ahead" was the answer he gave me.

Q. And that was all the conversation you had with reference to that? A. Yes, sir.

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Well, state whether or not you had any further conversation with Mr. Swan about it?

A. I did not.

(Testimony of George E. James.)

Q. During what part of the year 1907 did you use this ground—I will withdraw that question—you do not now claim this piece of ground to which you have just testified?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Do you, or do you not, claim this piece of ground that you have just testified to and marked “V” on this map? [397—357]

A. I do not claim it.

Q. Now, state over what period of time in the year 1907 you used this land in controversy and the grid-iron, platform, and approach to which you testified as having constructed thereon?

A. It was used practically all summer and after the approach was put in it was used more or less during the winter, all winter.

Q. Now, in the year 1908 what was done with reference to that piece of ground?

A. It was used for the same purpose as before.

Q. During what period of time?

A. From the commencement—spring on till late in the fall.

Q. And what about the years 1909, 1910, and 1911?

A. Just the same.

Q. 1912? A. The same.

Q. 1913, up to August? A. The same.

Q. Now, did you build any other structure on there in the year 1912?

A. In 1912 I built an easterly approach to it.

Q. What portion of that is on your own ground and what portion on some others?

(Testimony of George E. James.)

A. I think there is in the neighborhood of eight feet of that approach on the ground and the balance is on C. W. Young's ground.

Q. Now, during this period from 1900 until the time when this injunction was served on you, or until this action was commenced rather, had the Pacific Coast Steamship Company or the Pacific Coast Company landed any vessels at the Murray and Carroll wharf to your knowledge? A. They did not.

Q. What was the condition of that wharf in the year 1900, if you remember? [398—358]

A. Well, it was in bad condition in 1900. The one section of it was giving away then, that is the section connecting the cribbing with the outside of the dock.

Q. The cribbing, that was a portion of the structure inshore? A. Yes.

Q. What was the condition of the dock in 1903, or the wharf?

A. I think that section was down entirely then and the outer portion of the wharf still stood.

Q. What was its condition in 1904?

A. It was getting worse all the time.

Q. In 1905 and six?

A. In 1906 or 1907 a portion of the main dock itself fell down.

Q. (By the COURT.) Was it ever put up again?

A. No, sir, it has been tore out right along. They removed part of the cribbing this summer.

Q. (By Mr. GUNNISON.) In 1913 you had started construction work on the ground in controversy in this case; please state and explain to the

(Testimony of George E. James.)

Court what the character of the work was which you proposed to do, from which you were restrained by the order of the Court?

Mr. BAYLESS.—We object to that question as leading and suggestive.

The COURT.—I don't think it is either one—he has asked him to describe—what is leading about it?

Mr. BAYLESS.—It is just a little more than suggestive.

The COURT.—You are suing for an injunction, aren't you?

Mr. BAYLESS.—Yes.

The COURT.—And you set forth what the defendant is going to do?

Mr. BAYLESS.—Yes.

The COURT.—Very well, isn't it perfectly proper for [399—359] the defendant to say what he is going to do?

Mr. BAYLESS.—Judge Gunnison, instead of asking him, said “You made certain improvements.”

The COURT.—Certainly; that is just preliminary—what are you going to do? Proceed.

A. Why, business was increasing and I was handling considerable lumber. My gridiron would only accommodate one scow and I have four scows—I have five scows—and I wanted to place another gridiron on the other side and haul from both of them at the same time.

Q. (By Mr. GUNNISON.) Will you mark on this map or plat, Defendant's Exhibit “A,” your

(Testimony of George E. James.)

proposed improvements or structures on this ground?

A. (Witness indicates on map.)

Mr. BAYLESS.—We object to that as incompetent and irrelevant—I believe your Honor sustained the objection of Judge Gunnison when I tried to get in a map showing the contemplated improvements by the Pacific Coast Company.

The COURT.—Yes, but you were developing your side of the case.

Mr. BAYLESS.—This is a defense to an injunction suit and he is developing—

The COURT.—Very well, you have the right of rebuttal, haven't you? You were putting it in in chief to develop your side. When you come to rebuttal, it will be a different proposition, but your case in chief was your case against him, consequently it was immaterial.

Mr. BAYLESS.—Judge Gunnison, is this your affirmative defense—your case in chief on your affirmative defense?

Mr. GUNNISON.—Yes.

Q. (By Mr. GUNNISON.) Now, mark that “N.I.”

A. (Witness indicates on map.) [400—360]

Q. What is that?

A. It is a gridiron and a driveway.

Q. How is that gridiron to extend with reference to the beach line? A. Running—

Q. Parallel to it or at right angles?

A. The gridiron running at right angles to the

(Testimony of George E. James.)

beach line and the driveway running at right angles to the approach and also the driveway here, so that you can come down here and drive out here (indicating).

Q. In other words, so you can use the same approach—

A. Same approaches for the two gridirons.

Q. Now, what do you say as to what the effect would be on your use of this ground if the Pacific Coast Company should build a wharf across the face of it?

A. It would render it useless for my purpose.

Q. Why?

A. I wouldn't be able to get in and use it.

Q. With what? A. With scows and boats.

Q. Where wouldn't you be able to get in from?

A. Because their wharf—the front of it would extend and along—on the left-hand side; the C. W. Young wharf is on the right-hand side.

Q. You say in front—you mean between it and what, between your gridiron and that wharf?

A. And the wharf they are proposing to build.

Q. Deep water, is that what you mean?

A. Deep water.

Q. During the time you have used this ground and occupied it as you have testified, state whether or not you have sought or been given permission to use it by any person?

A. I don't understand that question. [401—361]

Mr. GUNDERSON.—Read the question, please.

(Q. read by stenographer.) During the time you

(Testimony of George E. James.)

have used this ground and occupied it as you have testified, state whether or not you have sought or been given permission to use it by any person?

A. I have not.

Mr. GUNNISON.—Now, your Honor, in the depositions which we have taken—two of them—and which have been offered in chief, there is some testimony with reference to the use of this ground by the Perseverance—the delivery of lumber to the Perseverance over this ground. There has been some testimony, as I recall it, by Mr. Swan with reference to the delivery of lumber to the Perseverance, and I think it is really a part of our case in sur-rebuttal, but the case is so confused in my mind now that I am not sure, and if your Honor thinks I would be precluded from offering it later, I would like to ask for permission now.

The COURT.—I cannot possibly look ahead and say what is going to be sur-rebuttal. The only question so far as the examination of this witness is concerned is to develop your case in chief. You can put him on again if you think it is sur-rebuttal.

Mr. GUNNISON.—Of course, the testimony of Mr. Swan—I guess that was in his rebuttal.

Q. Did you ever deliver any lumber—I will withdraw that—State whether or not during the time you have used and occupied this ground which you have testified to, you have ever delivered any lumber over it to the Perseverance Company, or what was known as the Perseverance Company here? A. Yes, sir.

Mr. BAYLESS.—Object to that as irrelevant, in-

(Testimony of George E. James.)

competent, and immaterial. That has nothing to do with this case.

The COURT.—It shows the usage. Objection overruled. [402—362]

Q. (By Mr. GUNNISON.) Now, when did you commence doing that, Mr. James?

A. In August, 1908.

Q. And over what period of time did you deliver lumber for the Perseverance on that gridiron?

A. The balance of 1908 and 1909 and up to the time—well, up to last year, more or less.

Q. Now, did you ever give the Perseverance—state whether or not you had ever given to any person permission to use this gridiron and piece of beach during these years to which you have testified?

Mr. BAYLESS.—Object to that as incompetent and irrelevant. That has nothing to do with this case and is a self-serving declaration.

The COURT.—It wouldn't be admissible in your case in chief, Judge Gunnison.

Mr. GUNNISON.—From that testimony—of which this is corroborative—in those depositions—

The COURT.—It has never been attacked yet.

Mr. GUNNISON.—No, that is right—I was confused about that matter. (After a pause.) Mr. Robertson suggests, and it seems right to me, that we probably have a right to show these as acts of ownership by Mr. James during this period of time.

The COURT.—To prove as an act of ownership that you never gave anybody else permission?

Mr. GUNNISON.—No, we are trying to prove that

(Testimony of George E. James.)

we did give others permission.

The COURT.—Read the question.

(Q. read by Stenographer.) Now, did you ever give the Perseverance—state whether or not you had ever given to any person permission to use this grid-iron and piece of beach during these years to which you have testified. [403—363]

The COURT.—It is probably my own mistake—I thought you intended to draw out that he never had given any permit. He may answer the question.

A. Yes, sir.

Q. (By Mr. GUNNISON.) State some of the persons to whom you have granted permission to use it and under what circumstances and when.

A. Why, Mitchell.

Q. Who was Mitchell?

A. Superintendent of the Perseverance Mining Co.

Q. John R. Mitchell?

A. Yes, sir.

Q. State the circumstances under which it was given.

A. He got permission for removing some machinery down to the new power-house.

Q. When was that?

A. I couldn't tell you the date.

Q. From whom was that permission obtained?

A. From me.

Q. Was that between January 1, 1906, and August, 1913? A. Yes, sir, between that time.

Q. State any other persons to whom you have given permission. A. I gave Mr. Harper—

(Testimony of George E. James.)

Q. Who was Mr. Harper?

A. Superintendent or manager of the Nevada Creek properties at that time.

Q. Where are they located?

A. Below the Ready Bullion on Douglas Island.

Q. Do you remember when that was given?

A. Well, it might have been in 1908 or 1909; I don't know.

Q. From whom was that permission obtained?

A. From me. [404—364]

Q. And was the ground used by those men pursuant to that permission? A. Yes, sir.

Q. Did anything occur during the Harper use—during the use of it by Mr. Harper and his company?

A. Mr. Harper put a heavy scow on there and broke it down for me during that time.

Q. Who repaired it?

A. Harper repaired it.

Q. At whose request? A. At mine.

Q. Did you grant permission to anyone else to use it? A. Yes, lots of them.

Mr. BAYLESS.—It is understood that this all goes in over our objection?

The COURT.—No, sir, because you didn't object to it.

Mr. BAYLESS.—I thought I objected to it.

The COURT.—I don't think so; on the contrary, I permitted you to prove your permission to Mr. Messerschmidt,—I supposed for that reason you never objected to it.

Q. (By Mr. GUNNISON.) Well, now, who else—

(Testimony of George E. James.)

The COURT.—The record will show it, Mr. Bayless, if you did.

Q. (By Mr. GUNNISON.—To what other person?

A. To Ed Webster, Bert Gabbs—oh, there are so many it would be awfully hard to name them all.

Q. That is, within this period?

A. Within this period, yes, sir.

Q. State whether or not this tract was used pursuant to that permission by these people.

The COURT.—Now, Mr. Bayless, if you want to object to that question, make your objection.

Mr. BAYLESS.—I object to the question. [405—365]

Mr. GUNNISON.—I won't ask it—

The COURT.—Very well, I sustain the objection.

Mr. BAYLESS.—Thank you, sir.

Q. (By Mr. GUNNISON.) State to the Court, please, what the value of the improvements—what is the value of the improvements you have placed on this ground?

A. Oh, it would be hard to say. It has been repaired and so much work done on there, so that the actual cost it would be hard to say, but I should judge it couldn't be replaced short of a thousand dollars.

Q. As it stands?

A. As it stands—maybe more.

Q. During the period that you have been in possession, has anyone dispossessed you of the ground or attempted to dispossess you of it, or ordered you off of it?

(Testimony of George E. James.)

A. No, sir, not until this suit was started.

Q. That was when? A. In 1913.

Mr. GUNNISON.—That is all.

(Whereupon court adjourned until 9:30 A. M., July 21, 1914, when court reconvened pursuant to adjournment.)

Mr. GUNNISON.—May it please your Honor, there are one or two questions I would like to ask Mr. James before I close the direct examination.

The COURT.—Very well, take the stand, Mr. James.

Q. (By Mr. GUNNISON.) Mr. James, in the complaint it is alleged,—or in the affirmative answer you have alleged that the Pacific Coast Company has sold by various certain forms of conveyance—deeded to the Town of Juneau—that the company had deeded to the town and dedicated a strip off the westerly portion of Blocks R, S and T—Where do Blocks R, S and T, lie with reference [406—366] to the ground in controversy?

A. Inshore and right back of the gridiron.

Q. They are the upland?

A. They are the upland.

Q. Which is the westerly portion?

A. The end adjoining the water.

Q. That is, the end abutting on the line of high tide? A. Yes, sir.

Q. And does the street extend over the line above the line of high tide there?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) State whether or

(Testimony of George E. James.)

not—I withdraw the former question—state what the situation of the street is at the point where the ground in controversy is situated, with reference to the line of high tide.

A. It is situated below high tide.

Q. Entirely below? A. In places.

Q. Does it extend over above the line of high tide anywhere across the face of this—

Mr. BAYLESS.—Object to that as leading.

The COURT.—Yes, it is leading.

Mr. GUNNISON.—I withdraw the question.

Q. You say it is in places; what do you mean by that?

A. Well, the meander line, shore line, would probably run down—there is a little bight in just where the gridiron is, but on the last part of it, I think the street is on part of the upland.

Q. You mean the structure?

A. The structure of the street, yes.

Mr. GUNNISON.—That is all.

The COURT.—Judge Gunnison, this Defendant's Exhibit "A" hasn't got the direction of the compass on it and it is [407—367] impossible to tell directions. Who made it? By whom did you introduce Defendant's Exhibit "A"?

Mr. GUNNISON.—By Mr. Webster, I think. The directions of the compass are on this.

The COURT.—That is one of the plaintiff's exhibits.

Mr. GUNNISON.—I know, but there is no controversy about the way it lies on the ground.

(Testimony of George E. James.)

Mr. BAYLESS.—Who made that plat, Judge?

Mr. GUNNISON.—Wettrick & Hill. The street line was used as the basis of that survey, the present street. Is there any controversy about the position of the compass there, Mr. Bayless?

Mr. BAYLESS.—I haven't examined it closely, Judge.

Mr. GUNNISON.—With your Honor's permission, we will withdraw that and have the points of the compass indicated on it by the engineer.

The COURT.—Very well. If this map is to be relied on—Before you close your case, Judge Gunnison, I wish you would call Mr. Wettrick, the man that made the map, and let him identify it and let him mark the directions—the same way with yours, Mr. Bayless. I am not sure by whom you identified this map.

Mr. BAYLESS.—I think I put that in with Mr. Ewing's testimony. I will say this, that the survey was made by a Mr. Muir, who was the Pacific Coast Company's surveyor in Seattle, residing in Seattle, and it will be impossible for me to prove the accuracy of it by him. I put it in more as a picture than anything else. As a matter of fact, it is a correct representation of the ground, but I haven't the surveyor who can testify to its accuracy.

The COURT.—Your map doesn't purport to be on a scale, as far as that is concerned—Yes, it does, 50 feet to one inch.

Mr. BAYLESS.—That is a representation of the recent subdivision of the town called the Pacific Coast Addition.

(Testimony of George E. James.)

The COURT.—Very well, proceed. [408—368]

Q. (By Mr. GUNNISON.) Mr. James, what is the width of the ground that you claim in this suit along the waterfront?

A. One hundred and thirteen feet.

Q. And that extends from where—the mark, or the point, from which that runs on the easterly, or down-channel side?

A. From the C. W. Young Company's wharf.

Q. And that runs this way, toward town?

A. One hundred and thirteen feet, yes.

Q. And you claim from the line of high tide to deep water.

Mr. BAYLESS.—Just a minute—

Mr. GUNNISON.—I will withdraw that.

Q. How far do you claim?

A. Out to deep water.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. James, how much of the property in dispute did you clear of rocks and driftwood in 1900?

A. Oh, we cleared a space there altogether about 200 feet—150—somewhere in there.

Q. What did you do in 1900 with reference to marking the boundaries of this tract?

Mr. GUNNISON.—We object to that question as being irrelevant, incompetent, and immaterial, and that the marking of the boundaries of tide lands is not necessary.

(Testimony of George E. James.)

The COURT.—It may be sometimes, though. Objection overruled.

A. Well, there was a very distinct boundary line by the rock piles on either side. [409—369]

Q. (By Mr. BAYLESS.) Let me understand you, Mr. James. Did you make any claim of ownership to this property prior to 1906? A. Yes.

Q. What was that claim of ownership?

A. Why, using it, occupying it.

Q. What did that claim consist of?

A. In usage.

Q. Your use consisted just in landing scows there from time to time? A. In 1906?

Q. No, prior to 1906.

A. In 1905 I had a structure on there.

Q. Well, you say in 1900 you claimed a space on this tide land of about 200 feet in width?

A. Approximately, yes.

Q. Beginning where and ending where?

A. Well, somewheres on the line between the C. W. Young property and the present place.

Q. Somewheres? A. Yes.

Q. Did you know where the C. W. Young company line was at that time? A. I did not.

Q. Mr. James, you don't claim any more than 113 feet now, do you? A. No, sir.

Q. Did you claim this 113 feet in 1900?

A. Yes, I think so.

Q. You think so?

A. Yes, and probably a little more.

Q. Why don't you now claim the extent of the ground cleared by you in 1900?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as being incompetent, irrelevant, and immaterial. [410—370]

The COURT.—Objection overruled.

A. Why, I have got nothing on it—only the 113 feet.

Q. (By Mr. BAYLESS.) You are only claiming now the ground you have structures on?

A. Yes, sir.

Q. And when did you first put your first structure on? A. 1905.

Q. How much ground did you claim in 1905?

A. Well, practically what I have got now.

Q. Did you have any defined limits of your claim in 1905? A. What I had cleared.

Q. How much did you have cleared?

A. Well, approximately 200 feet.

Q. You have abandoned all of the 200 feet except the 113 feet? A. Yes, sir.

Q. How did that happen?

A. I didn't need any more than that.

Q. It wasn't valuable to you?

A. I had no use for it.

Q. How big was the structure you put on there in 1905?

A. Somewheres in the neighborhood of 20 by 40 or 50.

Q. So that in 1905 you actually used only a piece of ground 20 by 45 feet in extent?

A. No, I can't say I did—I used more than that, because I was landing scows and rafts all over that place with the exception of where that platform stood.

(Testimony of George E. James.)

Q. Well, how continuously was your use of that ground? A. In 1905?

Q. Yes, about the time you had the first structure there.

A. We used it practically all of the time.

Q. Practically all of the time? [411—371]

A. At least all of the time during the summer season.

Q. That is to say, you would be on the ground yourself and you would have lumber on the ground?

A. Well, I would be on the ground some of the time, yes.

Q. Some of the time? A. Yes, sir.

Q. And how did you use it all of the time?

A. By landing lumber, discharging scows, rafts.

Q. Did you have a raft or scow on this piece of beach all of the time?

A. Not all of the time; it would be brought to the sawmill and reloaded part of the time.

Q. Then there were periods when you didn't actually occupy or use this ground during the summer of 1905? A. There might be a day or so, yes.

Q. You only used it in the summer of 1905?

A. I used it some in the winter.

Q. What part of the winter?

A. Well, I don't remember the dates.

Q. Have you any clear recollection of how continuously you did use this ground in 1905?

A. I believe I said practically all of the time in unloading a load and reloading.

Q. Are there any special circumstances that would

(Testimony of George E. James.)

cause you to recollect whether or not you used this ground continuously in 1905?

A. I could tell you the exact dates by my books when the lumber was delivered and also in the winter-time.

Q. How often did you send over a scow during the summer of 1905?

A. It would probably take anywhere from one to three days to load it and it would take sometimes from three to six days to unload it—sometimes ten days, probably. [412—372]

Q. Then there would be a period of how long when there would be no scow on the beach?

A. It might be anywhere from one to three to five days before it would be loaded again—sometimes there would be a raft to go right on.

Q. Did you keep a man on the beach to look out for it for you?

A. Most of the time there would be a man to watch it.

Q. Most of the time you would have a man on the beach? A. Yes, sir.

Q. To watch the lumber?

A. Yes, especially in rough weather.

Q. Were you asked that question in the preliminary hearing?

A. If I had a watchman on the property?

Q. Yes. A. I believe I was.

Q. What did you answer?

A. I answered that I had no watchman on the property, I believe.

(Testimony of George E. James.)

Q. You want to change your mind?

A. You asked me if I had a man watching my lumber; I said I did at times when it was stormy.

Q. Did you have any regular agent on the ground to represent you? A. No, sir.

Q. Isn't this a fact, that prior to the time you put your gridiron there in 1906 that was a vacant piece of beach, was not occupied by any one with any structures, and that you merely came there and landed lumber from time to time as it served your purpose?

A. I believe the Perseverance had a platform on there before that.

Q. That isn't exactly what I meant. Prior to the time Mr. Davidson, as receiver for the Willson-Sylvester Estate, erected a platform on the piece of property that you now claim, was there any actual occupant who was there continuously? [413—373]

A. Before that time?

Q. Yes. A. I don't believe there was.

Q. There was no one who could be considered an actual occupant of that piece of tide land?

A. Outside of my using it, no.

Q. And your use was merely casual and intermittent?

A. Well, if you would call handling a million or a million and a half feet of lumber during the season over that, it would be casually. I handled fourteen hundred thousand feet over there in one year.

Q. Wasn't that about the time you had the Perseverance contract?

(Testimony of George E. James.)

A. I had no contract with the Perseverance until July 20, 1908.

Q. And you never furnished any lumber to the Perseverance Company prior to July, 1908?

A. Not unless it would be in the neighborhood of three thousand feet in May of that year.

Q. Well, prior to May, 1908, you had no business relations then with the Perseverance Company?

A. I had not.

Q. Furnished no lumber to them at all? A. No.

Q. How much lumber did you bring over in 1900?

A. Fourteen hundred thousand feet went into the Last Chance Basin.

Q. Fourteen hundred thousand?

A. One million, four hundred thousand feet.

Q. One million, four hundred thousand feet?

A. Yes, sir.

Q. You brought over that much lumber in 1900?

A. From Sheep Creek, yes, sir.

Q. You couldn't be wrong about that?

A. I am not, sir; I have figures to show that.

[414—374]

Q. Didn't you testify in your direct examination that you brought over seven thousand feet in 1900?

A. Impossible; couldn't have done that. It must have been a misprint.

Q. Did you testify in the preliminary hearing that you landed in the neighborhood of seven thousand feet?

A. I did not. I furnished all the lumber for those big flumes up there that year and I couldn't possibly

(Testimony of George E. James.)

have said seven thousand feet for all that work.

Q. I will ask you if you were asked this question and made the following reply: State to the Court what were the uses you put that beach to in 1900; answer: We used it for landing my rafts and scows, mostly rafts that year. I delivered in the neighborhood of seven thousand feet of lumber over that property.

Question: During what year? Answer: In 1900.

A. All but the seven thousand feet. That couldn't possibly be right. They couldn't build any flume with that.

Q. I will ask you if you testified that you delivered somewhere in the neighborhood of seven thousand feet of lumber in 1900?

A. I testified to delivering lumber, but I don't think I said seven thousand feet.

Q. You didn't give this testimony then?

A. I didn't give the testimony of seven thousand feet.

Q. You didn't say in your direct examination that you had landed fourteen thousand feet in 1900?

A. Fourteen hundred thousand feet—one million, four hundred thousand feet.

Q. Well, Mr. James, when did you start delivering lumber in 1900?

A. We started somewhere in May, I think; it might have been the latter part of May.

Q. Was this man Biernoth with you at that time?

A. Yes, sir. [415—375]

Q. Was he with you during the whole season of 1900? A. Yes, sir.

(Testimony of George E. James.)

Q. Well, you started delivering lumber over here on the beach in May, 1900? A. Yes, sir.

Q. How long did you continue delivering lumber?

A. I don't remember the date we quit, but we worked up till snow-fly that fall; it might have been in October, might have been in November—I don't remember the dates. It was late before we got through.

Q. How many scows did you land in 1900?

A. Not very many scows—pretty near all rafts.

Q. How many rafts?

A. It would be impossible to say.

Q. Do you know how many rafts you brought over?

A. Well, there was a good many, but just how many I don't remember; some very big ones and some very small ones, but we never aimed to come with less than forty or fifty thousand feet to the raft.

Q. How much space would such a raft occupy on the beach?

A. Anywheres from forty to eighty or ninety feet.

Q. Square? A. Well, it would be rather oblong.

Q. Did you beach those rafts? A. Yes, sir.

Q. How did you come in—on high tide?

A. Come in on high tide, get them up as high as we could and tie them up.

Q. What did you tie to?

A. Piles and rocks, wherever we could get a good fastening.

Q. That is, in 1900? A. Yes, sir.

(Testimony of George E. James.)

Q. What piles did you tie to? [416—376]

A. I don't remember; I think there was two piles on one corner we tied to and we had one stump on the upland on the other corner, that we used and we had some big rocks on the sides that we used to run a line out to.

Q. Where were these two piles situated with reference to the line of the Young wharf?

A. I have learned since they were right on the line of the Young property and my gridiron.

Q. You tied up to those two piles at that time?

A. Yes, sir.

Q. About how many times a week did you land rafts in 1900?

A. Well, there was from one to two rafts lying there all the time.

Q. Lying there all the time?

A. All the time. I have seen three in there at one time, because the teams couldn't take care of it as fast as we could bring it. It was all hauled to the Last Chance Basin.

Q. Where did they haul it from?

A. From that place to the Last Chance Basin.

Q. Where did you raft your lumber?

A. Sheep Creek.

Q. You were in the sawmill business at Sheep Creek at that time? A. Yes, sir.

Q. When did you start the sawmill in Douglas?

A. Fall of 1900.

Q. And you discontinued the Sheep Creek Mill?

A. Yes, sir; I believe I paid Rand for it the follow-

(Testimony of George E. James.)

ing year, because I had lumber in the yard there.

Q. What did you do in the winter of 1900?

A. We were working.

Q. With reference to this beach, did you land any rafts on that beach in 1900 in the winter?

A. No, I don't think I landed any rafts; I landed some scows that [417—377] winter to finish up some lumber.

Q. You didn't testify to that in the preliminary hearing that you landed no scows at all in 1900?

A. I don't remember whether I was asked that question or not.

Q. Well, how often did you land scows over there in the winter of 1900?

A. I don't remember how many times.

Q. Well, about what dates did you land them there?

A. It was a long time ago—it would be pretty hard to give you the dates.

Q. Why, it is only fourteen years?

A. That is all.

Q. Do you know whether you landed any scows at all in 1900? A. I do.

Q. Is there any peculiar way in which you can remember whether it was 1900 or some other year?

A. The only peculiar part of it is I had some unfinished work, but just what part of the winter I don't remember—it depends a great deal on the state of the weather in the winter-time.

Q. How much of the time in the winter of 1900 was that beach unused by you?

(Testimony of George E. James.)

A. Well, it was unused when I wouldn't use it.

Q. How much of the time did you not use that beach in the winter of 1900? A. I couldn't say.

Q. Did you use the beach more than just two or three times in the winter of 1900?

A. Probably not.

Q. Well, in 1901, what did you do with reference to landing rafts on their piece of beach?

A. I don't remember.

Q. Do you know whether you landed any rafts there or not? [418—378] A. I don't know.

Q. Do you know whether you brought over any rafts in 1901? A. In 1901 during the year?

Q. Yes. A. Yes.

Q. Well, how often did you bring them over?

A. Not very often in rafts in 1901, mostly scows; the only time I would bring a raft was when I was crowded for a scow.

Q. When did you start landing lumber over there in 1901?

A. I think we started the sawmill that spring in the latter part of April or the first part of May, and started delivering lumber as soon as we opened the mill. In fact, I think we delivered some before the mill opened that year.

Q. What time did the mill open?

A. Later part of April or first of May.

Q. And you immediately started to bring over lumber and land it on this beach? A. Yes, sir.

Q. When did you quit delivering lumber over here in 1901?

(Testimony of George E. James.)

A. At the end of the year, I guess.

Q. Up to Christmas?

A. Very close up to Christmas.

Q. Your recollection is right clear about that, Mr. James?

A. It might have been the latter part of November; might have been December.

Q. Do you depend upon your memory a great deal or have you any memoranda from which to refresh your memory?

A. I could tell exactly by looking over my books.

Q. Have you looked over your books to refresh your memory?

A. Not for during those first years, no, sir; later years I have.

Q. Well, what was the size of the scow which you brought over in 1901? [419—379]

A. I had two; one was either 16 by 44 or 14 by 44, I don't remember exactly, and I had another smaller one—that was probably 10 by 30, somewheres in there. I don't remember the exact size.

Q. Where, with reference to the present gridiron did you land those scows in 1901?

A. Well, sometimes right in front of it, and sometimes a little to one side, or a little to the other side. It all depended on the teams. If I had two in there we would fix it so we could load from either side or from the end.

Q. Did you have any particular spot where you landed these scows each time you brought them over?

A. Well, we tried to get them in the best place we

(Testimony of George E. James.)

could, on account of the beach, evenness and cleanliness of the beach, and the best place for the teams to pass around them up to them; that is what we were governed by.

Q. I believe you said in 1900 you cleared the beach of driftwood and debris? A. Yes, sir.

Q. How often did you clear that beach in 1901?

A. We done more or less clearing most every raft we brought in—would be crowded for room and sometimes would have three teams in there and we kept working on it off and on all summer—lots of big boulders on that beach.

Q. What did you do with the boulders?

A. Rolled them out of the road.

Q. Piled them up?

A. They were pretty well piled up at that time.

Q. Did you pile them up on the mounds?

A. No, they were too heavy to roll on top of each other.

Q. Are those there now?

A. The best chance we had to get rid of those boulders was on low [420—380] tide. We would get them on a steep place and they would roll off themselves.

Q. You rolled these boulders?

A. Yes, Charley and I rolled some pretty big boulders.

Q. How much of the time in 1900 did you spend pushing boulders around?

A. That would be pretty hard to say. We have worked there to midnight. We worked on tides prin-

(Testimony of George E. James.)

cipally and might have got in a good many extra hours overtime.

Q. You rolled these boulders out and dropped them off in deep water?

A. All we possibly could, yes, sir.

Q. So those boulders you rolled out there in 1900 don't appear on the ground now?

A. They were rolled off so they wouldn't bother us any more.

Q. You testified that in 1900 there were a couple of piles there on the line of the Young wharf property and the Pacific Coast Company's property; did you know at that time whom those piles belonged to?

A. I did not.

Q. Did you know at the time you went on there whose property you were encroaching on or occupying? A. In 1900?

Q. Yes.

A. Why, I hardly think I did, who it belonged to in 1900.

Q. What were your intentions in 1900 with reference to occupying it or using this piece of beach?

A. My intentions were very good, because I used it pretty much that year.

Q. Did you know that that beach belonged to any one?

A. I thought the beach belonged as much to me as anybody; I was using it. [421—381]

Q. Did you know who owned the upland?

A. I did not.

Q. Well, did you intend to go in there and appro-

(Testimony of George E. James.)

priate that piece of tide lands to your own use?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) In 1900?

A. Well, I certainly intended to use it as long as I had any business and was using it at that time.

Q. Did you intend to hold it against all comers in 1900?

A. I don't think I didn't know whether anyone did claim it outside of me; didn't know anything about it.

Q. When you landed lumber over here in 1900, didn't you just use that because it was a convenient piece of beach, without having any intention of claiming it as your own property?

A. Why, I cleared it and was using it and intended to keep it and use it.

Q. And clear it and hold it against all the world?

A. Well, I suppose so.

Q. Did you make your claim known to anybody?

A. Why, I was there all the time and everybody seen me there.

Q. You were there all the time in 1900?

A. I lived in Juneau and worked there and was there almost daily.

Q. Three hundred and sixty-five days in 1900?

A. Oh, not absolutely that many days; might have skipped two or three; might have skipped four or five, and might have been there four or five times in one day.

(Testimony of George E. James.)

Q. You didn't go there until May? A. No.
[422—382]

Q. And you quit along about October?

A. Might have been November; I don't remember exactly.

Q. You don't know when you did quit, do you?

A. Either one of those two months.

Q. Now, you want the Court to understand that between May and November you were on that ground every day and that everybody could see you on the ground?

A. Sometimes three times a day and sometimes I would be there a half day without being off the ground, and sometimes I wouldn't be on the ground for two or three days.

Q. But you didn't know that the uplands belonged to the Pacific Coast Company and the tide lands as well?

A. No, I didn't pay any attention to the uplands; I didn't use the uplands.

Q. You didn't know to whom it belonged?

A. I didn't know to whom it belonged to.

Q. When did you become aware that this piece of property was claimed by the Pacific Coast Company? A. In 1913.

Q. So from 1900 to 1913 you used this property from time to time, but didn't know that the Pacific Coast Company claimed to be the owner of it; is that a fact?

A. I might have surmised that they claimed it, but

(Testimony of George E. James.)

no one ever notified me that they did claim it.

Q. I am asking you if you know?

A. No one notified me that they owned it.

Q. Did you know that the Pacific Coast Company claimed to be the owner of that property?

A. Of the upland?

Q. And tide lands as well?

A. Yes, I think I did before. I think I knew, or at least it was [423—383] said they claimed it.

Mr. GUNNISON.—Q. Claimed which?

A. The uplands and that tide land.

Q. (By Mr. BAYLESS.) When did you find out that they claimed the tide lands? A. 1913.

Q. You didn't know before that time that the Pacific Coast Company claimed to be the owners of these tide lands? A. They didn't tell me so.

Q. Well, I am asking you, Mr. James, whether you knew they claimed to be the owners of it?

A. I knew they claimed the Murray and Carroll wharf site.

Q. Did you know how big that wharf site was?

Mr. GUNNISON.—I submit that he ought to allow the witness to finish answering it.

The COURT.—I understood that the witness answered it. Do you want to answer any more?

A. No.

Q. (By Mr. BAYLESS.) Do you know how big the Carroll wharf site was?

A. I know how big the wharf was, but not the wharf site.

Q. Did you know the boundaries of the Carroll-

(Testimony of George E. James.)

Murray wharf site? A. I did not.

Q. When did you first become aware of the fact that the Pacific Coast Company claimed to be the owner of the tide lands you now claim?

A. In 1913.

Q. You knew of no claim of ownership prior to that time?

A. No, I was under the impression they had abandoned the whole tract for a wharf site.

Q. The whole tract—did you ever hear of the McCloskey case?

Mr. GUNNISON.—We object to that as being immaterial.

The COURT.—I didn't hear the question.
[424—384]

(Q. read by stenographer.) The whole tract—did you ever hear of the McCloskey case?

The COURT.—That question may be preliminary, of course. It isn't any more relative than lots of other questions if left by itself, but I imagine it is merely preliminary.

Mr. GUNNISON.—We submit that the McCloskey case was a case that involved none of this tide land at all.

The COURT.—I don't know anything about that, Judge Gunnison.

Mr. GUNNISON.—I do.

The COURT.—All right—the Court is not supposed to know anything about it so far as this question is concerned. Objection overruled.

Mr. GUNNISON.—We think it is immaterial

(Testimony of George E. James.)

whether he did or did not.

The COURT.—There is certainly no objection to that question.

Mr. GUNNISON.—Exception.

A. Yes.

Q. (By Mr. BAYLESS.) You know that McCloskey tried to jump a piece of the company's waterfront?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, until it is shown that it is this piece of waterfront in controversy.

Q. (By Mr. BAYLESS.) A piece of the Carroll-Murray wharf site?

Mr. GUNNISON.—Same objection.

Mr. BAYLESS.—Mr. James stated that he was under the impression that the Pacific Coast Company had abandoned the waterfront, the Carroll-Murray wharf site tide lands; that is the impression I got from his answer.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) You know that McCloskey started to drive some [425—385] piles on a portion of the Carroll-Murray wharf site tide lands, don't you?

Mr. GUNNISON.—Same objection.

The COURT.—Objection sustained.

Mr. BAYLESS.—Well, now, if the Court please, my position is this: We are entitled to show acts of ownership over the whole Carroll-Murray wharf site, including this piece of property for this reason: At the time the wharf site was located it was a piece

(Testimony of George E. James.)

of uplands and tide lands 600 feet square and a wharf was put on there in the middle of it and for a number of years it was actually used in toto. After the wharf was abandoned as a wharf and the vessels landed over on this wharf, the wharf buildings and improvements on this whole piece of property were used and occupied and had been occupied and used down to date, and there was nothing to distinguish the piece of tide lands now claimed by Mr. James from any other portion of the Carroll-Murray wharf site, and it was treated as one block of land by the company at all times, and if we are prevented from proving acts of ownership as to other portions of this tract, we will be precluded from getting in some points that are essential in this case, and I desire to show what we have been doing with the whole tract, because I take this position, in addition to that, that if we had been in actual possession of a portion of this piece of property at all times and the whole piece of property has been marked and bounded on the ground, and there are monuments to show that, and we claim the whole piece of waterfront, that we don't have to be in possession of every inch of that property in order to be considered in possession of the whole thing.

The COURT.—Do you expect to prove that by the cross-examination of the defendant's witness?
[426—386]

Mr. BAYLESS.—No, but Mr. James said he was under the impression that we had abandoned the tide land.

(Testimony of George E. James.)

The COURT.—That he was under the impression—now, then, you can cross-examine to show that he wasn't under that impression, but you cannot cross-examine about anything Jim McCloskey did or anybody else did.

Mr. BAYLESS.—Here is the rule—

The COURT.—No, Mr. Bayless, I am satisfied you are wrong about it. The objection will be sustained.

Mr. BAYLESS.—Your Honor will allow me an exception to that?

The COURT.—Certainly.

Q. (By Mr. BAYLESS.) Mr. James, did you know how much tide land was included in the Carroll-Murray wharf site?

A. No, not until this case started.

Q. Do you know Mr. Charles E. Davidson?

A. Yes, sir.

Q. Did you know him in 1905? A. Yes, sir.

Q. He was living here in 1905?

A. Part of the time, yes.

Q. He was receiver of the Willson-Sylvester Estate? A. At Wrangell, yes, sir.

Q. And that estate of the Wrangell sawmill had a contract to furnish lumber and mill timbers for the Perseverance Mining Company; do you know that?

A. That would be hearsay if I would tell you that.

Q. Well, did you know that in 1905 there was that arrangement?

A. I think there was that kind of an arrangement, but I had nothing to do with the business, so I

(Testimony of George E. James.)

couldn't tell you whether it was the Perseverance or somebody else; I don't know. I suppose it was the Jashua-Hendy people that had the contract, but I am not sure. [427—387]

Q. Your recollection is that it was the Joshua-Hendy people that bought it from the Wrangell sawmill?

A. That bought it from the Wrangell sawmill, yes, sir.

Q. It was delivered on the beach you now claim?

A. Yes, sir.

Q. To the Perseverance Company?

A. They told me that the Perseverance had the contract, or at least that is what they told me. I tried to get part of it, but they told me that Joshua-Hendy had a contract and had already made arrangements to get their lumber at Wrangell, so it couldn't be for the Perseverance.

Q. Couldn't be for the Perseverance?

A. Might be for the construction of their buildings.

Q. That is here for the Perseverance mill?

A. Yes, sir.

Q. Do you know what arrangement Mr. Davidson had with the Pacific Coast Company?

A. I have heard it here, yes, sir.

Q. Did you know in 1905 what that was?

A. I did not.

Q. Were you aware that the Pacific Coast Company leased that property which you now claim to Mr. Davidson as receiver?

(Testimony of George E. James.)

A. Davidson said, I believe, they had leased it at that time.

Q. He told you they had leased it?

A. Yes, sir.

Q. From the Pacific Coast Company?

A. He didn't say who it was from; he said he had a lease on it.

Q. You didn't know from whom he had leased in 1905? A. No, I didn't ask him.

Q. How did he come to tell you he had leased it?

A. I told him he could move over and give me a little more room and he said he had a lease on that.
[428—388]

Q. And you mean you didn't ask him who the lessor was? A. No, I did not.

Q. And that was all the conversation you had with Mr. Davidson?

A. About that particular thing, I believe, yes, sir.

Q. Do you know whether Davidson built any structure on that piece of tide land?

A. Yes, he put up a platform on that.

Q. Do you know whether he used that platform?

A. Yes, sir.

Q. Do you know how often it was used?

A. I think he used it five, for five or six scow-loads of lumber that summer.

Q. And that was all? A. Yes, sir.

Q. Did you make any objection to his using that?

A. I made objection to him crowding me there, that is all.

Q. And he was occupying a portion of the beach

(Testimony of George E. James.)

which you say you once claimed? A. Yes, sir.

Q. And you didn't do anything more than just merely object to it, and Davidson then told you he wouldn't move because he had a lease?

A. Yes, sir.

Q. Didn't he tell you he had a lease from the Pacific Coast Company?

A. Not to my knowledge he didn't.

Q. Well, were you aware at that time that the Pacific Coast Company claimed these tide lands?

A. I don't remember whether I was or not.

Q. Are you quite sure, Mr. James, that you didn't know of any claim by the Pacific Coast Company of ownership in these tide lands until just before this suit was brought? [429—389]

A. For an absolutely certainty I didn't, but I heard they owned it and claimed it.

Q. And you didn't know in 1905 from whom Davidson had leased?

A. I don't know whether I did or not.

Q. Well, did you claim the piece of ground that Davidson occupied in 1905 at that time?

A. I claimed that as part of the ground I had cleared and he was getting in my road and I told him he might have moved over farther to give us more room, and, if I am not mistaken, he told me that he had to get it done and then he would move over farther, and so I says I wouldn't want to obstruct any development of the company.

Q. But you laid claim at that time to the piece of ground which Davidson built on? A. Yes, sir.

(Testimony of George E. James.)

Q. And you didn't put him off? A. I did not.

Q. You didn't order him off? Did you have any idea how long he was going to stay on that ground?

A. I think he told me he had in the neighborhood of six hundred and fifty or seven hundred thousand feet of lumber to deliver to the Joshua-Hendy people and the scow carried from a hundred and twenty to a hundred and twenty-five thousand feet, so it wouldn't take very long, but it took longer than they expected, about three or four months.

Q. Did you know how long that lease was given for? A. No, I didn't ask him.

Q. Mr. Davidson used that platform all the summer of 1905, didn't he? A. All the summer, yes.

Q. And you landed some lumber on that platform, didn't you? A. Not to my knowledge, I didn't.

Q. Didn't use it at all? [430—390]

A. I don't think I did, in fact I know I didn't.

Q. You are quite sure that you never used that platform for any purpose?

A. If I did use it, it might have been to throw a few pieces off my scow on it, but I don't recollect that.

Q. Well, do you know whether or not you did use it at any time?

A. It would be pretty hard to say.

Q. Didn't you answer in reply to a question from your attorneys that you had never used that platform of Davidson's?

A. I don't remember; I might accidentally have thrown a piece of lumber.

(Testimony of George E. James.)

Q. Your recollection is that you never used that platform?

A. That is the best of my recollection, yes, sir.

Q. Have you any recollection of testifying any differently in your preliminary hearing in this case?

A. As to my using the platform?

Q. Yes. A. I have not.

Q. I will ask you if you were asked this question and made the following reply: While they were not using it, who did use it? Answer: I used it once to unload a little boat of lumber. Question: Did you get permission to do that? Answer: No, I didn't ask permission. A. Well, I might have said that.

Q. As a matter of fact, Mr. James, your recollection isn't very clear about all these little details?

A. Yes, it is pretty clear.

Q. Are you prepared to swear positively about all these little matters that have transpired so long ago?

A. Some of them are very clear to me, because I had more or less to do with it myself. [431—391]

Q. How often did you use this platform of Davidson's?

A. Well, not very much. If I threw any lumber off the scow, it might be part of a load and I might have wanted the scow in a hurry and I might have lifted to this platform—it was quite possible to lift from the scow to the platform. It was built so it would stand out of the highest water and it was quite possible to lift it from the scow. I might have thrown a few pieces off the scow onto it.

(Testimony of George E. James.)

Q. What was Davidson doing while you were using the platform?

A. He was probably down at Wrangell sawing lumber.

Q. You do not know what he did? A. No, sir.

Q. Well, when this Wrangell lumber was landed on the beach it was landed on the ground you now claim, was it?

A. Landed on that platform, yes, sir.

Q. And it was landed in from Gastineau Channel right over the tide lands you now claim; is that a fact?

A. The scow was landed right alongside that platform and unloaded, yes, sir.

Q. How much of the tide lands which you now claim were actually occupied by Davidson in the summer of 1905?

A. I don't recollect the size of that platform, but it must have been 40 feet by 24 feet. That was the structure, to the best of my recollection. It might not have been that large and there might have been another bent in it, but I don't remember.

Q. What I am getting at is this: In order to get to this platform which was near high-tide mark, or at or near high-tide mark, the scow had to come over the ground from the channel and came over the present site of your gridiron, didn't it?

A. Yes, sir.

Q. It was brought right over the ground where you afterwards built your gridirons? [432—392]

A. Yes, she floated in to the platform.

(Testimony of George E. James.)

Q. How much ground did Davidson occupy in addition to this platform in the summer of 1905?

A. Well, what space the wagon took up and the space in the water that the scow took up. He always tried to unload on high tide, because the scow was too frail.

Q. Well, how much of this 113 feet which you now claim did Davidson occupy in 1905?

A. Somewheres in the neighborhood of 40 by 24 feet with his platform.

Q. That is all he did occupy?

A. To my knowledge, yes, sir.

Q. Do you know whether he had any lumber piled on the beach?

A. It was all on the beach; it fell down; it was all on the beach at one time.

Q. How much of this 113 feet did the lumber cover?

A. Scattered over, I couldn't tell you.

Q. Most all of it?

A. Yes, more than that. I guess some of it went clear up town. They lost considerable of it.

Q. Did you ever interfere with Davidson's occupation of the ground you now claim?

A. I told him he was crowding me—that was all in a friendly way.

Q. In just a friendly way? A. Yes.

Q. You didn't go at him like the owner of a piece of tide lands usually goes after a trespasser, did you?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and imma-

(Testimony of George E. James.)

terial and argumentative.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Well, you didn't threaten to eject him if he didn't move, did you, Mr. James? A. I did not. [433—393]

Q. Do you know whether or not the Perseverance Company hauled any lumber over across the lands you now claim in 1906 and 1907? A. Yes, sir.

Q. They got that lumber from where?

A. From the Jorgenson sawmill, but still that road went right up to the edge of it. I don't think they ever came down past the present road. I think the wagon-road was right close up there.

Q. Are you sure the wagon-road wasn't on the beach?

A. It was on the beach at high-water mark. I wasn't up that high.

Q. Didn't you claim the beach up to the high-water mark?

A. Yes, sir; I made myself a road in there.

Q. And your wagon-road was close to high-water mark? A. Yes, sir.

Q. On part of the land you now claim?

A. No, that is where the street stands now—the piece you sold to the city for a street, that is where the wagon-road was.

Q. Well, the Perseverance wagons hauled lumber from the Jorgenson sawmill in 1906 and 1907 over the property that you now claim, didn't they?

A. I don't think they got down past the plank street. I don't know what year that was sold in. I

(Testimony of George E. James.)

think it was already sold for a street at that time and that is where the wagon-road was built.

Q. You haven't any actual knowledge whether the company sold the street off of that piece of property to the city or not, have you?

A. I know they dedicated it or sold a piece of the waterfront to the city.

Q. When did you know that?

A. I think when they built the street in 1906 or 1907. I think it was 1906.

Q. Did you know how much the company was dedicating to the city?

A. Why, I heard it was either twenty or forty feet, twenty feet.

Q. You heard it was? [434—394] A. Yes.

Q. Was any portion of the land dedicated a portion of the property which you had claimed?

A. Yes, sir.

Q. Was the street built on this property so dedicated? A. Of the strip you mean?

Q. Yes. A. Yes.

Q. Was it built on the property which you had claimed? A. A part of it, yes, sir.

Q. Did you do any dedicating yourself.

A. I did not.

Q. Did you make any objection to the city putting a street in there?

A. No, I believe I helped them.

Q. You didn't make any objection to the Pacific Coast Company dedicating a piece of property which you claimed, did you?

(Testimony of George E. James.)

A. No, I was glad to see the street go in there however they got it.

Q. Did you notify the city that the piece of property which the street was going over was claimed by you? A. I did not.

Q. Mr. James, have you ever paid any taxes on this piece of property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, immaterial and not proper cross-examination.

The COURT.—Objection overruled.

A. I have not.

Q. Have you always openly, notoriously and adversely claimed this piece of property prior to the institution of this suit?

Mr. GUNNISON.—Object to that as calling for a conclusion of the witness.

The COURT.—Yes, I think so, Mr. Bayless. What is openly, notoriously, adversely? It is a question of law and depends upon the facts and circumstances. Ask him as to facts [435—395] and not conclusions.

Q. (By Mr. BAYLESS.) Well, Mr. James, have you ever made a public claim of ownership to this piece of property?

Mr. GUNNISON.—We object to that question as calling for a conclusion of the witness—I don't know whether he means he hired a hall and made a speech about it or what.

The COURT.—Yes, I think so, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. James, you say

(Testimony of George E. James.)

you have made a claim of ownership to this piece of property; is that a fact? A. Yes, sir.

Q. When did you first make your claim of ownership?

A. When I began to clear it and use it.

Q. To whom did you make that claim?

A. I don't know as I went out and cried it on the street corners or anything of that kind. I started in to use it, clear it off, and prepare it and improve it.

Q. Did you tell anybody that you were going to claim it?

A. I don't remember whether I did or not; I might.

Q. Did you file any location notice?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

A. No.

Mr. GUNNISON.—Wait a minute—

The COURT.—Had you finished your objection?

Mr. GUNNISON.—No, sir, and further that the claim to tide land isn't necessarily established by the filing of a notice. That isn't the basis of the use of tide lands.

The COURT.—That may all be true, but he may show all the facts and circumstances which have any bearing. Objection overruled. [436—396]

Mr. GUNNISON.—Do I understand your Honor to hold that the filing of a location notice is necessary in the occupancy of tide lands, or that it is merely indication of intention?

(Testimony of George E. James.)

The COURT.—I didn't say anything that would lead you to believe that it was necessary. I don't make any holding—I simply say it sometimes might have weight and sometimes might not.

Q. (By Mr. BAYLESS.) You didn't file any location notice, did you, Mr. James? A. No.

Q. Did you tell anybody in 1900 that you were going to claim that piece of beach?

A. I don't remember.

Q. Did you tell anybody in 1901?

A. I don't remember.

Q. Do you remember whether you ever told any one? A. Yes, sir.

Q. When did you first make known your claim of ownership there? A. I don't remember.

Q. Well, was it prior to the commencement of this action? A. Yes, sir.

Q. How much prior?

A. Might have been six, seven, or eight years; might have been ten years.

Q. In 1903? A. Might have been.

Q. Well, now, I am not asking you whether it might be—I would like to know if you can state when you first made your claim to this property?

Mr. GUNNISON.—We object to that as calling for a conclusion of the witness—if he means when he first said anything to anybody—

The COURT.—Do you mean a verbal claim?
[437—397]

Mr. BAYLESS.—Yes.

(Testimony of George E. James.)

The COURT.—Very well—Change the question to that extent.

Q. (By Mr. BAYLESS.) When did you first make a verbal claim to be the owner of this property?

A. I don't remember the date.

Q. Well, to whom did you make that claim?

A. To Nick Uren.

Q. He is no longer in these parts, is he?

A. No, he isn't here now.

Q. He was a business associate of yours, was he?

A. No, sir.

Q. He was engaged in business on this side?

A. Yes, sir.

Q. And you did business with him frequently?

A. I don't remember of doing much business with Nick on this side. He did some before he moved from Douglas.

Q. You told him this in a private conversation, did you?

A. Well, we didn't call in anyone to hear it that I remember.

Q. Do you know about what time that was—what date it was?

A. The only way I have of fixing the time would be the first year he moved over here.

Q. When was that?

A. He was a lessee from the Pacific Coast Company at that time.

Q. Well, was anybody present when you told him this?

A. I don't remember. I was talking to Nick Uren.

(Testimony of George E. James.)

Q. Did you tell anybody else that you claimed to be the owner of this property? A. I have.

Q. Do you remember of your telling anybody else that you were the owner? A. Yes, sir. [438—398]

Q. Who did you tell?

A. I told Mr. B. M. Behrends.

Q. Mr. Behrends is a partner of yours in the saw-mill over at Douglas? A. He is, yes, sir.

Q. That was also told to him in a private conversation?

A. I don't know whether it was a private conversation or not.

Q. Well, did you walk in his office in the bank when there was a lot of people there and announce in a loud tone of voice that you were the owner of this particular piece of property?

A. I told Mr. Behrends that I was claiming it.

Q. You told him? A. Yes, sir.

Q. You were in his private office in the bank, which is almost sound proof, is it not?

A. It might have been on the street, I don't remember now.

Q. Well, you were careful about telling him that?

A. No, I don't usually whisper.

Q. You weren't making any public news of your intentions, were you, Mr. James?

Mr. GUNNISON.—Object to that as argumentative.

The COURT.—Yes, I think so.

(Testimony of George E. James.)

Q. (By Mr. BAYLESS.) Nick Uren didn't come over here until 1908 or 1909, did he?

A. I don't remember when he moved over.

Q. It might have been 1910?

A. I don't remember.

Q. Well, it was a long time after you had built your gridiron down there, wasn't it?

A. Couldn't be so very long. I remember of getting some drift bolts from him on this side for some of that, but whether that was for the approach or repairs I don't remember.

Q. Well, did you tell anybody besides Uren and Behrends? [439—399]

A. Oh, I don't remember; I have told several people about it.

Q. Didn't you tell your bookkeeper?

A. Well, he would be working for me.

Q. You told your bookkeeper, didn't you?

A. Yes, sir.

Q. You and he had a little secret talk?

A. Yes, sir,—in the back room.

Q. Did you tell any agents or officers of the Pacific Coast Company that you were going to claim this property? A. None of them ever asked me.

Q. You were very friendly with Mr. Swan in particular, weren't you? A. Yes, sir.

Q. You did considerable business with the Pacific Coast Company, didn't you?

A. I am doing that yet.

Q. And while Mr. Swan was agent here for the company you and he were good friends, weren't you?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial—whether he was friendly or not.

Mr. BAYLESS.—It is more or less preliminary.

Mr. GUNNISON.—We admit that he was friendly, to save time.

The COURT.—Very well.

Q. (By Mr. BAYLESS.) You saw Mr. Swan very frequently while he was agent here?

A. Yes, I have seen Mr. Swan lots of times.

Q. You have talked with him about a great many subjects, haven't you? A. About what?

Q. About business and other things?

A. Yes, I talked to him about coal, sometimes a few freight claims that I used to try to get him to settle.

Q. But you never said a word about your having any adverse claim [440—400] to this piece of property on the beach? A. To Swan?

Q. Yes. A. Swan never asked me.

Q. And you never told him. You just sat tight and said nothing; is that right?

Mr. GUNNISON.—We object to that as being argumentative.

The COURT.—He has answered the question. It seems to me, Mr. Bayless, it is just a waste of time in repeating it. You ask it in a light-hearted tone after you have got an answer to the question. An objection to any further questions about whether he said anything to Mr. Swan will be sustained.

Q. (By Mr. BAYLESS.) I want to ask Mr.

(Testimony of George E. James.)

James this question: As far as Mr. Swan, or any of the other agents of the Pacific Coast Company was concerned your claim of adverse possession was secret; is that a fact?

Mr. GUNNISON.—That is objected to as being argumentative, calling for a conclusion, and has already been answered in the main.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. James, have you any paper title?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, and immaterial.

A. I don't understand what you mean by paper title.

Mr. GUNNISON.—Wait a minute—Did the Court rule on the objection?

The COURT.—What is the objection?

Mr. GUNNISON.—There isn't any claim to paper title.

The COURT.—Objection overruled. Explain to him what you mean by paper title.

Q. (By Mr. BAYLESS.) You don't claim to own this by virtue of having filed any location notice?
[441—401] A. No, sir.

Q. Or having the property conveyed to you by any deed? A. No, sir.

Q. Or of holding under any lease? A. No, sir.

Q. In other words, you have no paper title to support your claim?

A. No paper title, if that is what it is called.

Q. And your claim is based merely upon occupation and is not by any color of title?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as calling for a conclusion.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Your claim is based merely upon possession, use and occupation?

A. Yes, sir.

Q. Mr. James, under what theory do you hope to win this case?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent, immaterial, and as calling for a conclusion of the witness.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. James, when did you build the first approach to the gridiron?

A. 1907, in the spring of 1907.

Q. How much of the 113 feet which you claim did this approach occupy? A. I don't know.

Q. Would you say it occupied approximately fifty feet? A. In length?

Q. Yes.

A. I don't know; I couldn't say exactly.

Q. Prior to the time you built the westerly approach, the approach toward town from the gridiron, there was no structure on this beach? [442—402] A. On the part that the approach is on?

Q. Yes. A. No, sir.

Q. There was no structure at all on that piece of tide land which you now claim?

A. Prior to that, no, sir.

Q. The only structure that you had erected there was your gridiron in 1906?

(Testimony of George E. James.)

A. That gridiron and the platform on the inside of the gridiron.

Q. The platform erected by Davidson?

A. No, sir, Davidson's was erected in 1905.

Q. Where was this other platform?

A. Right in here to pile lumber on (indicating).

Q. When did you put that platform on?

A. When this was built.

Mr. GUNNISON.—Q. What do you mean by "this"? A. Gridiron.

Q. (By Mr. BAYLESS.) Is that platform there now? A. Not the same one.

Q. Well, how wide was that platform?

A. Oh, it might have been 50 feet by 24.

Q. By 24 feet wide and 50 feet long?

A. Yes, calling the length this way. (Indicating.)

Mr. GUNNISON.—Q. Parallel to the beach?

A. Yes.

Q. (By Mr. BAYLESS.) How wide is the present platform?

A. Twelve feet.

Q. What happened to the other platform?

A. It went out. After I put in this roadway there was just a few bents. I used it for awhile, but it was too hard to use it, so we discontinued using it.

[443—403]

Q. When did you build that platform twelve feet wide? A. 1907.

Q. At the same time that you built the approach. When did you build the approach to the easterly over Young's property?

(Testimony of George E. James.)

A. In the spring of 1912, I think.

Q. So prior to 1912 there was nothing on a portion of the ground you now claim, on the easterly portion?

A. This platform here extended clear out here. This gridiron is under here and when a scow overhangs she hangs up against these piles. I have a line here to tie to from the dividing line of the C. W. Young property and my gridiron. (Witness indicating.)

Q. When did you drive that row of piles?

A. I don't remember the year.

Q. How long prior to the time you built the gridiron?

A. I think it was in 1906 that I drove those piles. It might have been earlier than that, I don't remember. Mr. Webster was in there driving piles for someone else and they came over and drove those for me, but I think it was 1906.

Q. Did you ever have piles driven in the westerly boundary line of your property?

A. Only the piles that supports this here. (Indicating.) There are three piles up in there that were set.

Mr. GUNNISON.—Q. What do you mean by "in there"?

A. On this approach on the inshore side and upper corner.

Q. Of which approach?

A. Westerly approach; in the year 1907.

Q. (By Mr. BAYLESS.) Did you ever drive a

(Testimony of George E. James.)

row of piles on the westerly boundary line of your property as claimed by you now? A. I did.

Q. When? A. In 1913.

Q. And you were enjoined from driving any more piles on this boundary line? [444—404]

A. Yes, sir.

Q. And that was the occasion for this suit; is that a fact? A. I believe it was.

Q. You commenced—

A. I commenced construction of this gridiron in here that I propose to build and this platform here, this driveway here connecting with this driveway. (Indicating.)

Q. Prior to that time was there anything to the west of your present gridiron except the approach to the street? A. No, sir.

Q. There was nothing on the ground which you have been enjoined from building on? A. No, sir.

Q. Prior to that time? A. No.

Q. Mr. James, in 1901, 1902, and 1903, or thereabouts, did you know that the Pacific Coast Company was in some litigation with certain Indians and other people over the lots and blocks of the uplands upon which the beach which you claim abutted on?

A. They didn't tell me anything about it. I might have heard it from other people.

Q. You didn't know that the Indians were disputing our right?

A. Not from my own knowledge, only from hearsay; where it was or how it was—I knew nothing about it.

(Testimony of George E. James.)

Q. You knew nothing about this litigation over the uplands? A. I did not.

Q. Abutting on your claimed tide lands—knew nothing of that? A. I did not—only hearsay.

Q. Hearsay at that time?

A. I don't remember when the time was. It might have been afterwards; might have been at the time.

Q. You didn't know that the Pacific Coast Company was laying claim [445—405] to the uplands in 1903?

A. I didn't have anything to do with the uplands.

Q. You didn't know that the tide lands were in controversy? A. I did not.

Q. Knew nothing of that?

A. I had no controversy with them, I know that.

Q. Wasn't it a matter of common knowledge here at that time that the Pacific Coast Company owned all the uplands in R, S and T, including the tide lands?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and as calling for a conclusion of the witness.

The COURT.—Objection sustained.

Mr. BAYLESS.—I think that is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. James, how much of those tide lands did you use in the year 1905, the land in controversy, in landing your scows and delivering lumber over that beach?

A. I used more in 1905 than in any other year.

(Testimony of George E. James.)

Q. Now, describe to the Court how you used it.

A. This platform practically stood in the center of the tract that I had cleared and I had to get around on whatever side I could in order to make a landing and discharge lumber.

Q. Did you land on various places or only in one place?

A. I landed in various places other than besides where I used my little gridiron.

Q. Now, with reference to that testimony on the preliminary hearing that counsel read to you, in which you are quoted in the testimony [446—406] as having delivered or landed only seven thousand feet of lumber in the year 1900; what do you say as to whether or not that is correct?

A. Seven thousand feet?

Q. Yes, sir.

A. There was over a hundred and twenty thousand feet in riffle blocks alone. There was one flume that was eighteen hundred feet and that was four by four, built out of two-inch plank, and all stringers; and another one twenty-eight hundred feet in length; that was a 4 by 5 flume; and there was another flume that was over two thousand feet long—that was 2 by 3, built out of two-inch planks and was covered all over. I had the contract and furnished the lumber and built them in that year.

Q. And were they furnished over this portion—over this ground? A. Yes, sir.

Q. You say a raft would occupy from forty—forty by eighty or ninety feet; how do you mean it would occupy a tract? A. Occupy?

(Testimony of George E. James.)

Q. When it was on the beach?

A. When it was settled on the beach or in the water it took up that space.

Q. How much space was necessary to land a raft of that kind? A. Oh, a couple hundred feet.

Q. In ordinary weather?

A. A couple hundred feet in ordinary weather, yes, sir.

Q. Counsel inquired of you if you intended to keep the ground and claim it; when did you first intend to do that—when was it you intended to make that claim to this ground in controversy?

The COURT.—Intended to claim it?

Mr. GUNNISON.—That is what counsel asked him, if I remember right—if he intended to use it when he went on the ground. [447—407]

Q. (By Mr. GUNNISON.) Well, what do you say with reference to the purpose which you had in mind when you went on that ground in 1900?

Mr. BAYLESS.—Object to that as immaterial.

The COURT.—Objection overruled.

A. Why, to prepare it, use it as a place of landing, occupy it.

Q. (By Mr. GUNNISON.) What do you say about that with reference to other people, the use of it by other people—use of it by others? That is, your use of it with reference to using it by other people? Did you intend that it was to be yours, or were you making an occasional use of it?

A. That it was to be mine to have it and use it.

Q. What do you say as to the character of your use

(Testimony of George E. James.)

and occupancy of that ground; that is, as to whether it has been secret, or whether it has been open and that you have used it at all times of day over this period of time?

A. I have been on there day and night.

Q. To whom has lumber been delivered that has been landed there?

The COURT.—That has all been gone over, Judge Gunnison.

Mr. GUNNISON.—Well, I guess it has.

Q. (By Mr. GUNNISON.) Now, you testified something about trying to get part of the Perseverance contract; please state what there was with reference to that in 1905.

A. I tried to get the contract with the Perseverance people to furnish the lumber for their mill up there, but was told that the Joshua-Hendy people had the contract and they were doing the buying and I went to the foreman, Mr. White. They had a man before he came here and I even tried to get it through him, but he said it was already bought and contracted with the Wrangell people.

Q. Now, prior to the time that the plank road was built over the ground was the Jorgenson mill in operation? [448—408]

A. Yes, sir.

Q. Now, how did the people in the town, the teams from town, have access to that mill?

A. Traveled over the beach.

Q. Where was the road or the place where the teams were driven with reference to this ground that you use an doccupy now and claim?

(Testimony of George E. James.)

A. They were driven over it on the upper portion where the road now stands.

Q. That is, it is practically over the same ground now covered by the road? A. Yes, sir.

Q. Were you one of the petitioners for the construction of that road? A. I was.

Q. State whether or not the construction of that road facilitated your use of that property—the construction of the plank road? A. It did.

Mr. BAYLESS.—Object to that as immaterial and not proper redirect examination.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) In what way?

The COURT.—Well, I don't think you ought to be allowed to go any further.

Q. (By Mr. GUNNISON.) Now, you say you built that first approach in the spring of 1907, that is, the westerly approach? A. Yes, sir.

Q. Did you use that ground over which that approach is built prior to that time? A. Yes, sir.

Q. How?

A. That was my roadway to the gridiron, my way of getting around to the gridiron on both sides.
[449—409]

Q. Did you ever use it in the landing of scows or anything of that kind? A. Yes.

Q. How? A. By mooring them there.

Q. And for how long a period?

A. Oh, that would be hard to say.

Q. I mean, during what period of time—I don't mean how long you moored there?

(Testimony of George E. James.)

A. Oh, during all the time there would be scows tied in there, more or less.

Q. You have testified something as to the building of a platform; do you mean the portion that is now covered by the driveway back of the gridiron, so as not to confuse it with the Davidson platform?

A. I built a platform in there so that when I would get part of the load off and if I wanted the scow back sooner than they could unload it, I would take and unload it off on that platform; then they could keep hauling and I could load again.

Q. Where was this platform—between the gridiron and the road? A. Yes.

Q. Where does it stand—where did it stand with reference to that portion of your structure now used as a driveway? A. The driveway is right over it.

Q. In the same place? A. In the same place.

Q. And the driveway was put in—

A. It would take away half of it.

Q. The driveway was put in 1907?

A. Yes, sir.

Q. As part of your approaches; that is, to facilitate the access to the scow as it lay on the gridiron? [450—410] A. Yes, sir.

Q. By a team? A. Yes, sir.

Q. In this litigation concerning which counsel has interrogated you between the Pacific Coast Company and somebody on the upland, were you a party to that litigation? A. No, sir.

Q. Were you the defendant or plaintiff?

A. I wasn't.

(Testimony of George E. James.)

Q. Were you a witness in the case?

A. I Wasn't.

The COURT.—Well, I ruled those questions out, Judge Gunnison, virtually. The witness never testified to anything on cross-examination; consequently, I cannot see how this is redirect examination.

Mr. GUNNISON.—I thought your Honor admitted the question with reference to litigation over the upland.

The COURT.—There was no objection made to it to start with, but the witness has answered it that he didn't know anything about it.

Mr. GUNNISON.—Well, I withdraw that and consent that it may be stricken then.

The COURT.—Very well.

Q. (By Mr. GUNNISON.) Now, how much of that 113 feet are you now occupying and using?

A. All of it.

Q. And were you using it at the time of the commencement of this action?

A. I was using it all. [451—411]

Q. How much of it do you need for the purposes of your business?

Mr. BAYLESS.—Object to that as immaterial.

The COURT.—It is not redirect examination.

Q. (By Mr. GUNNISON.) When you went on the ground in 1900 did you see any location notices or stakes—location stakes—of the Pacific Coast Company or any other party on this ground in controversy? A. I did not.

The COURT.—Now, you didn't ask him that, but

(Testimony of George E. James.)

Mr. Bayless asked him on cross-examination and he said there wasn't; consequently there was nothing new brought out.

Mr. GUNNISON.—All right, sir, I will withdraw the question.

Mr. BAYLESS.—If the Court please, I have this recollection of that—I think I asked him if there were any piles or posts.

The COURT.—He is asking him about location notices.

Mr. GUNNISON.—I think he has already testified to the piles.

Q. Counsel interrogated you with reference to your use of the platform—of the Davidson platform, so-called—did you obtain any permission to use that?

A. No, I did not.

Q. And your use was only a casual use, as you testified? A. Yes, sir.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Do you know whether Davidson saw you use this platform?

A. I do not; he might have seen me using it and he might not.

Q. At the time this suit was brought were you claiming a piece of [452—412] tide lands 113 feet square?

The COURT.—Square?

Mr. BAYLESS.—Yes, square.

A. It wouldn't be square. Of course, I needed

(Testimony of George E. James.)

deep water to get in. It would be 113 feet across and out to deep water.

Q. Were you using every portion of this 113 feet along the beach and out to the water?

A. I had to come in from deep water; there is no other way to get in there.

Q. You came in from the deep water to this gridiron, didn't you? A. Yes, sir.

Mr. GUNNISON.—We object to that as not being proper cross-examination.

The COURT.—Objection overruled—I am not clear about that matter myself.

Q. (By Mr. BAYLESS.) You came in from Gastineau Channel to this gridiron as shown on your exhibit "A"? A. Yes, sir.

Q. Now, Mr. James, you did not use any portion of that 113 feet to the westerly of the gridiron with the exception of the approach to the street, did you?

A. It is almost impossible to land the scow in there with a boat and a scow seventy-five feet long without having to go over this part here. If this was fenced off, I could not get the scow in there. (Witness indicating.)

Q. How big is your scow?

A. I think the scow is 74 feet long.

Q. How big is your gridiron?

A. The gridiron is about seventy feet and overhanging.

Q. The gridiron is as big as your scow?

A. Smaller than the scow, because the scow flares and overhangs on each end. [453—413]

(Testimony of George E. James.)

Q. As a matter of fact, you had no structures with the exception of the approach? A. No.

Q. And you were not using this piece of tide lands between the gridiron and your westerly limit as claimed by you at the time this suit was brought?

A. I was using it, yes, sir.

Q. And landing your scows there? A. Yes, sir.

Q. And it took all the rest of the ground?

A. Yes, and a little more if I had it. It would make it a little more convenient.

Q. Were you using any portion of the tide lands inside this 113-foot claim to the north or toward the uplands from the platform at the time this suit was brought?

A. Yes, there was several structures in there where I would unload lumber.

Q. What were they?

A. Platforms built, piles set and caps on them where we would unload lumber in there and we had a sand platform built in here before that suit was brought. (Indicating.)

Q. Was this space toward the uplands from the gridiron completely covered with structures and in use by you at the time the suit was brought?

A. Completely covered? What do you mean?

Q. Completely covered with sand boxes and such as that, by piles set in the ground

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) By piles set in the

(Testimony of George E. James.)

ground and covered with caps and stringers, and so on—structures? [454—414]

A. Yes, sir, it was.

Q. Entirely covered?

A. No, there might be a place right in there up toward the westerly approach, by the approach and the street—no, that was used, because there was a tramway there, so it was practically covered.

Q. Was that portion of your 113-foot claim used prior to 1907, when the approach was built?

A. This ground in here?

Q. Yes.

A. It was used with that platform that I had.

Q. You had a platform that extended from the gridiron clear up to where the street is now?

A. Clear up to the street.

Q. And all of that was occupied?

A. All of that platform?

Q. No, everything from the gridiron up to the street was used? A. Yes, sir.

Q. When did you start using that portion of the ground you now claim? A. In here?

Q. Yes.

A. I built a platform in there when I built the gridiron.

Q. In the spring of 1906?

A. In the spring of 1906 and after the approach was built, part of this platform was torn off and then it was extended so we could roll heavier timber in here and leave it for the wagons.

Q. But you had no structures on this ground or

(Testimony of George E. James.)

any portion of it prior to 1906, when you built this gridiron?

A. Yes, sir, I had this gridiron (indicating).

Q. That little gridiron there? A. Yes, sir.

Q. And that was how big? [455—415]

The COURT.—Well, haven't you gone over all that?

Q. (By Mr. BAYLESS.) Did you build any structure between the gridiron and the street since this suit was commenced? A. No, sir.

Q. Did you give permission to any other person or corporation to build any structures in there?

A. I did not; I did not consent. The Alaska-Juneau put them in there and I told them it was their own risk; I had nothing to do with it.

Q. That is on land you claim? A. Yes.

Q. What did the Alaska-Juneau Company do?

The COURT.—Never mind—I can't go into that.

Q. (By Mr. BAYLESS.) Those structures that are now between the gridiron and the street are not occupied by you? A. Now?

Q. Yes.

Mr. GUNNISON.—We object to anything that is there now—the suit goes to the time of the commencement of the action, 1913.

The COURT.—Objection sustained.

Mr. BAYLESS.—All I wanted was for the Court to get a clear idea of the various improvements that exist on the ground there now. If the Court understands that, I haven't anything further to say.

The COURT.—I don't think it makes any differ-

(Testimony of George E. James.)

ence whether the Court has a definite idea as to that now or not.

Q. (By the COURT.) I see on this plat, Defendant's Exhibit "A," a line marked "Line of Young's piles." How long is that line of piles approximately?

A. A hundred and—I should say a hundred and twenty feet. [456—416]

Q. It extends from the shore line out into deep water? A. Yes, sir.

Q. How close together are those piles?

A. The inshore bents, I think they are twelve feet centers.

Q. I mean, how close together are the bents—from one bent to another? A. Twelve feet.

Q. You couldn't get a scow in there, could you?

A. No, sir—oh, yes, a small scow might.

Q. You couldn't get a scow in from there up on your gridiron? A. No, sir.

Q. How far is it from the easterly end of your gridiron as it is now constructed to that line of Young's piles in a direct line—straight line?

A. From the gridiron out?

Q. From the end of your gridiron to the line of Young's piles? A. About ten feet.

Q. How far is it from the westerly end of your gridiron to what you claim is the boundary of your property westerly? I want to know how far it is from the westerly end of your gridiron to the line that is marked "N.D."

A. It might be fifty feet, might be forty-five feet,

(Testimony of George E. James.)

it is hard to say; I wouldn't know exactly—probably nearer forty feet.

Q. How long is it from the westerly end of your gridiron to the line marked "E. H." in a straight line?

A. I can give you the exact figures—twenty-six feet.

Q. I want to know why you have to have more ground on the westerly end of your gridiron than you have to have on the easterly end?

A. Because coming in with the barges or scows you can't come in straight—you have got to turn. You can't do anything here. There is an eddy in this place. [457—417]

Q. (By Mr. GUNNISON.) You came in from west to east? A. From west to east.

Q. State that over again, Mr. James.

A. In coming in here with a boat—

Q. Where with a boat?

A. From deep water, into this gridiron, you have got to come in in this manner and run in here and back up the stern and the boat will swing right here.

Q. Where is "here"?

A. On this part of the ground.

Q. Which part?

A. Westerly part of this ground.

Q. That portion that is marked "N.D."?

A. Yes.

Q. When you put your scows on the gridiron, you put them on longitudinally with the beach—parallel with the beach?

(Testimony of George E. James.)

A. Yes, sir. Then another thing, there is no way to get up from the beach except by this approach.

Q. (By the COURT.) Well, when the C. W. Young line of piles was built on that side, why didn't you object to that, because it cuts you off from that side? A. Why, I drove these piles there.

Q. You drove them for yourself?

A. Yes, sir; I didn't know I was driving these on the line with the exception of these few here. I continued these piles so as to have mooring places.

Q. You marked some improvements "N.I."; what do you expect to put in there?

A. Another gridiron and driveway.

Q. A wharf? A. A gridiron. [458—418]

Q. You don't expect to reach above the surface of the water?

A. I had no intention at that time.

Q. Have you intention at this time?

A. I have not at present.

Q. If you build a gridiron there, can you use the gridiron which you have marked "James Gridiron"?

A. Yes, sir.

Q. You can use both gridirons?

A. I would put this scow in first—this scow in last. Put this scow in on the old gridiron, moor it, and run the second scow—it can be run in on the new gridiron and this same driveway that extends down through here over in this direction can be utilized for both of them.

Q. (By Mr. BAYLESS.) Mr. James, isn't it your practice to put a gas boat or a tug behind these

(Testimony of George E. James.)

scows and bump them in to the gridiron?

A. We come in on high tide. If we should bump them in, would be on top of this driveway. I have got only two piles, one at each end of the gridiron, up against the driveway.

Q. (By Mr. GUNNISON.) Between the gridiron and the driveway?

A. Between the gridiron and the driveway; that gives free access to the driveway from the scow.

Q. (By Mr. BAYLESS.) Do you take any more ground than that claimed by you in landing your scows?

A. Can't now, it is all piled in there; the ground is all piled.

Q. (By Mr. GUNNISON.) What do you mean?

A. The ground to the west of this line here is all piled in.

Q. (By the COURT.) The line "N. D."?

A. Yes, the line "N. D."

Q. (By Mr GUNNISON.) You said this was twenty-six feet from the line "N. D." to the line "E. H." and the line from "E. H." to the line of your gridiron—How far is it from the line "N. D." to the line "E. H."? [459—419] A. Twenty-six feet.

Q. Now, from the line "E. H." to the westerly end of your gridiron?

A. Twenty feet probably—couldn't tell exactly.

Q. Then you would say from the line "N. D." to the westerly line of your gridiron is forty-six feet approximately?

A. I would say that was as near as I can come to it.

(Testimony of George E. James.)

Q. And I understand you to say that all to the west of the line "N. D." is piled in? A. Yes, sir.

Q. It is twenty-six feet—Who piled it in and when was it piled in? A. This portion?

Q. In the west line "N. D."

A. In 1913 it was piled in there by Alex Hart.

Q. Prior to that time you had been going over that land to get in to your gridiron? A. Yes, sir.

Q. (By the COURT.) Have you ever tried to get in to your gridiron after those piles have been built by passing over that open space between the lines "N. D." and the end of your gridiron.

A. Yes; have come in there all summer with lumber.

Q. Do you ever go in any other way?

A. Sometimes if there is anything on here, I run the scow in here and tie up here and wait for this to be discharged.

Q. I am not talking about any increased business, but the business you have been doing on that gridiron and the size of the scows that you have carried on business with on that gridiron.—Is it possible and practicable for you to land scows on your gridiron if you don't own this piece from "N. D." to "E. H."?

A. It is, yes, sir, but it is very hard to handle, very hard, I couldn't land the scow without this with the boat. I would have to drop the boat and get a hold of the piles here with a pike pole, because I can't swing with the boat and scow in here. [460—420]

Q. Do you consider that the space between the

(Testimony of George E. James.)

line "N. D." and the line "E. H." is absolutely necessary for you to own or to have in order to get scows into your gridiron? A. It is.

Q. Your gridiron as it is now constructed and the character of the scows that you have been using?

A. It is necessary for that business.

Q. And you have been using that piece of land, have you?

A. Yes, and more; before this was driven I used more of it.

Q. Yes, but if the tide land westerly of the line "N. D." has been piled in—That is an established fact in the case that that has been piled in—Now, does the piling in of that make any difference in the practicability of getting scows into your gridiron?

A. It does to a certain extent; it does hamper me from getting in there to a certain extent.

Q. But you didn't enjoin them from hampering you, did you?

A. Why, I only claim up to here, your Honor.

Mr. GUNNISON.—To the line "N. D."

Q. (By the COURT.) But you have not occupied that?

A. I did, yes, in tying up, landing my scows in here, turning around and swinging this boat; I have always used it.

Q. (By Mr. BAYLESS.) Since this suit has been commenced, haven't you been occupying the space between the lines "N. D." and "E. H." by little rafts and things; haven't you had that space all covered up, tied boats in there, and isn't that the

(Testimony of George E. James.)

way the situation is at the present time?

A. There is a cradle lying in there now.

Q. Lying in that space? A. Yes, sir.

Q. You have been landing your rafts or your scows onto the gridiron, haven't you? [461—421]

A. I haven't been landing any lately.

Q. Have you landed any on the gridiron since this cradle has been in that space?

A. I think I have a small scow.

Q. It is perfectly possible to occupy this space to get in there? A. With a small scow.

Q. It is perfectly possible for you to get in this space even if it is piled?

A. By untying the boat and holding on to the piles.

Q. It would be a little more convenient for you to have more space, but it isn't absolutely necessary?

A. A landing can be made without by poling the scow in and tying the boat outside.

Q. It is merely a matter of convenience, isn't it?

A. It is merely a matter of convenience to turn and to have this space so I can land and it is necessary so I can land the scow with the boat. A scow couldn't land with a boat without that.

Q. It isn't necessary for a scow to be with a boat?

A. Not absolutely necessary, no.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. James, you say that prior to the commencement of this suit, prior to the time the line

(Testimony of George E. James.)

“N. D.” was piled in, in landing you sometimes came across that ground, the beach lying to the westward of the line “N. D.”? A. Yes, sir.

Q. Now, what time did you land—at what stage of the tide did you make your landings?

A. At high tide. [462—422]

Q. And what is the situation on the ground on a high tide?

Mr. BAYLESS.—Objection to that as immaterial.

The COURT.—Objection overruled.

A. The tide backs up in here.

Q. (By Mr. GUNNISON.) Just give us our direction—how does it get in there?

A. Well, Judge, it is awfully hard to explain the thing; we know that the tide must strike on this side.

Q. On which side? A. On the east side.

Q. Land side?

A. On the east side of that gridiron and diverts there and goes on up toward the bar and all this water backs up there comes in these docks.

Q. Comes back into the shore moving from a westerly direction to an easterly direction?

A. Yes, sir, and when you get a scow in here—

Q. Now, the Court asked you about piling in this line in which the two piles marked “P. P.” and marked on the plat as Young’s piles—Describe to the Court what the condition of the beach is below or to the eastward of this line of piles known as the Young piles in that immediate vicinity?

A. There is a ridge in here, bar sticking out; it is from a dirt slide and all full of big rocks and if a

(Testimony of George E. James.)

scow would go on there it would wreck it.

Q. So that it never was available as a landing place for a scow? A. No, never.

Q. Now, in 1913, to the westward—I will withdraw that—In 1913 since the commencement of this suit, the line “N. D.” was piled, was it?

A. In 1913?

Q. Yes, sir. A. It was. [463—423]

Q. After the commencement of this suit and all to the westward of it was piled? A. Yes, sir.

Q. By whom, if you know—the Pacific Coast Company, the plaintiff? A. I presume it was.

Q. Now, since that time have you been landing scows on this gridiron? A. Yes, sir.

Q. How have you done it?

A. Just by coming in here.

Q. In where?

A. From the channel to this westward line and sticking the end of the scow in to the easterly line and then swinging right in here with the stern of the boat up here.

Q. Stern end to the westward? A. Yes, sir.

Q. Taking the boat in from west to east?

A. Yes, sir.

Q. How have you landed there, by tug?

A. By gas boat.

Q. Well, you mean a gasoline tug?

A. Gasoline tug, yes, sir.

Q. Now, what do you say as to whether that is the safe and efficient way in which to land a scow there?

Mr. BAYLESS.—Object to that as immaterial and

(Testimony of George E. James.)

not proper redirect examination.

The COURT.—I don't think it makes any difference about the safest and most efficient way. The question is, whether any other way is safe—not whether that is the safest way or not. What I am trying to get at is, why he can't, instead of stopping at "D," we will say, at the line "N. D.," he cannot go in at the line "E. H." [464—424]

Q. (By Mr. GUNNISON.) Why is it necessary, Mr. James, to use the space covered between the lines "E. H." and "N. D." in docking your scows on this gridiron?

A. Well, now, if you will let me explain—

Q. While you explain it, give it so the record will be straight.

A. In towing the scow, in the first place the boat has got to stick out at least half the length of the boat in order—

Q. Which boat?

A. The towboat. In order to steer her. To take a scow 74 feet long and half the length of a 40-foot boat—that would be pretty near 94 feet, wouldn't it? That would be the length of the two crafts, and the tide setting in here. We always landed on a high tide in order to get it on the gridiron and to settle on that place, and the tide is in this way here and would drive you right against the piling—

Q. The C. W. Young line of piles?

A. The C. W. Young line of piles, or this pile that I had driven in between the platform and the gridiron and probably I have at times set the end of the

(Testimony of George E. James.)

scow up on the driveway here. If the tide was setting in too strong, by having this space in here and coming in from the westward direction and landing here and backing up my boat until it comes right in here, it is possible to hold it off from these structures here and get tied up, and in doing that, the length of those two—scow and the boat—would reach very near over to this line.

Q. Which line? A. The line "N. D."

(By the COURT.)

Q. If you had a gridiron in there and a scow on it, what would be the result?

A. It would be the same, because you come in on high water above. You can't land at low tide.
[465—425]

Q. (By Mr. GUNNISON.) The Court says: What if there was a scow on this portion marked "N. I."?

A. Then I would have to stop right here with my boat, swing the end of the scow right in here and leave my boat out here.

Q. (By the COURT.) That could be done?

A. Yes, sir.

Q. Practically?

A. It is not practicable—it is too hard to avoid the wharf.

Q. What I am trying to get at, Mr. James, is this: do you want this land for increased business, or do you want it as a means of carrying on the business you have been carrying on?

(Testimony of George E. James.)

A. I want it for the business I have been carrying on this way.

Q. Well, what are you going to build any gridiron in the space between "N. D." and "E. H." for?

A. This gridiron—this here isn't drawn to scale, these marks I have made with a pencil. This approach here is twelve feet wide, this gridiron twenty-four, and this here goes on an angle through here. That leaves me quite a space in on the westerly line—at the westerly end of the gridiron; that is, 24 feet and 12, or 36 feet, and this angle here would probably make it 36,—45 feet probably or very close to it, and laying a 50-foot scow in here would only have ten feet outside of the gridiron to interfere with my landing in here.

Q. (By Mr. GUNNISON.) The Court asks whether it is necessary to use this gridiron here in the space marked "N. I." for the purpose of carrying on the business which you now have and not for prospective business? A. It is necessary.

Q. Why and how?

A. Because—I mean in carrying on the business this won't accommodate it all.

Q. Which one? [466—426]

A. The present one. Because I can't discharge the lumber fast enough here.

Q. (By Mr. BAYLESS.) Mr. James, if you win this case, won't you immediately put in a gridiron over here?

Mr. GUNNISON.—He has testified to that already.

(Testimony of George E. James.)

Mr. BAYLESS.—I thought he was trying to get away from that.

Q. You will put in another gridiron? A. Yes.

Q. (By the COURT.) Well, however you put the gridiron in the space marked “N. I.,” won’t that interfere with your carrying on the business on the place called “James gridiron”?

A. It might interfere with it a little, as that scow would probably stick out ten feet beyond this line.

Q. What do you mean by “that line”?

A. Beyond the northwest line of these piles; it would stick out in towards deep water, but not enough to keep the boat from swinging inshore and landing this scow, because it would give me this swing up in shore, but ten feet would not be sufficient—

Q. You mean that the gridiron that you propose to construct between the lines “N. D.” and “E. H.” would extend toward deep water ten feet beyond the line of the present piles; is that what you mean?

A. Or the present gridiron.

Q. Ten feet to the seaward of the present gridiron? A. Yes, sir.

Q. (By Mr. GUNNISON.) But not beyond the present line of piles and the gridiron wouldn’t go to deep water; is that what you mean?

A. No, sir, that wouldn’t go to deep water.

Q. Counsel has interrogated you with reference to having something on the ground to the seaward of the westerly approach and between [467—427] the lines “N. D.” and “E. H.”; what have you on

(Testimony of George E. James.)

there and how much ground is covered at the present time, if any.

A. There is a cradle laying there for a boat. That floats on every tide.

Q. How far out does that extend?

A. I couldn't say.

Q. How far beyond the seaward line of your present gridiron, if at all?

A. I don't think it extends beyond it; might be out even with it. I haven't paid particular attention to it.

Q. Would you say that interfered with the operation—with the docking of your scows or landing of your scows on the gridiron at the present time?

A. It wouldn't.

Q. I am asking you about what is on there now.

A. No, sir.

Q. (By Mr. BAYLESS.) Doesn't it extend about thirty feet to the seaward of this present gridiron?

Mr. GUNNISON.—You mean from the outside end of the present gridiron.

A. I don't think it would extend outside of the present gridiron, unless it has been moved lately.

Q. (By Mr. ROBERTSON.) Mr. James, if the piece of land you have now extended from the line of the C. W. Young piles over to the line "E. H.," would it be practicable or possible to continue your present business, the business which you had at the time of the commencement of this suit?

A. No, sir.

Q. (By Mr. BAYLESS.) Didn't you tell me it

(Testimony of George E. James.)

would be possible to get scows in there?

A. Not impossible, but it would be impracticable to land a scow in between those two lines. [468—428]

Q. And you could do it in that way and carry on the business you were doing at the time of the commencement of this suit?

A. It is possible to land the scow by hand.

Q. And it is a mere matter of convenience, isn't it, whether you have more ground or are restricted to that?

A. It is not possible to land a scow between these two lines with a boat with any safety. It is not possible—I will answer your other question. It is not possible—on certain stages of the tide it is impossible, because you can go through and break this out or break the gridiron down. There is a very strong tide in there. You can't go in unless it is high tide—it is a beach.

Q. You don't mean to say you can't do it that way, do you, Mr. James, that you can't land your scows that way?

A. It is often unsafe for one thing to try to land by hand. While we have landed by hand by getting a stern line in here, we have landed that way, by one man coming in with a boat and getting the stern line on there, but it is impossible to land without that space so as to back in here and hold the boat.

Q. (By Mr. GUNNISON.) You don't mean to say that it is impossible to do it, but it is very difficult to do it? A. Very difficult to do it.

(Testimony of George E. James.)

Q. (By the COURT.) Well, now, you say that in the space between the line "N. D." and "E. H." you want to build a gridiron; now, suppose you do build a gridiron there—will not the building of that gridiron put out of commission your old gridiron? In other words, when you bring a scow in to the old gridiron, the vessel towing the scow will stick out from the end of the scow about half the length of the vessel; you put the nose of the scow on the end of your gridiron and your vessel swings back—all right now, won't it swing back on the new gridiron at "N. I."? [469—429]

A. We could go out that way. If the scow was 24 feet wide and the scow only come up to these piles, that is, between the gridiron and the driveway, that would be 24 feet from here out, at least to where the boat would swing.

Q. Do I understand you to say this: That the gridiron you intend to build will terminate a great deal to the landward side—will be a great deal to the landward of deep water; do you know what I mean?

A. Yes, sir.

Q. In other words, if you do the way you are contemplating—building a gridiron in the space "N. I."—you mark about what the limits of the gridiron you want to build there will be. Just mark it with a letter.

A. (Witness marks map—Defendant's Exhibit "A.")

Q. Then the new gridiron you want to build there would be approximately enclosed by the space

(Testimony of George E. James.)

S. U. G. Y.? A. Yes, sir.

Q. Then, assuming that you built your gridiron, your new gridiron—S. U. G. Y.—and you want to land a scow on your old gridiron and you come around to where “H” is, past the letter “H,” and put the nose of your scow on the easterly end of your gridiron, then your boat would swing back a little and come in the space between S. U. and H. O.?

A. Yes, sir.

Q. And therefore it wouldn't bump against your new gridiron? A. No, it couldn't.

Q. Then your new gridiron will practically not extend any further in the water than the James Gridiron now standing? A. No.

Recross-examination.

(By Mr. BAYLESS.)

Q. You have never used this space S. U. G. Y. before, have you, prior [470—430] to the bringing of this suit?

A. Oh, yes, there has been lumber handled over this one up here; had sand, gravel, brick and other materials handled over there.

Q. When did you first start using it?

A. That has been there eight or nine years.

Q. How continuously did you use it? When did you first start using this space?

A. After the approach was built.

Q. That is, after 1907?

A. In the year 1907 and afterwards.

Q. But you didn't ever use it prior to that time?

A. Only for tying up rafts and scows.

(Testimony of George E. James.)

Q. Did you ever tie up scows and rafts in there prior to 1907? A. Yes, sir.

Q. When did you first start doing it?

A. Oh, I think in 1900 I had a raft out in there.

Q. Did you ever use any beach to the westerly of this line "N. D." Mr. James?

A. Not in here. There was a platform standing in there. That is the boundary line in there.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. What would be the level of the platform, or the gridiron S. U. G. Y. with reference to the James gridiron? A. Exactly the same.

Q. And how are they built with reference to medium low water?

A. They are four feet below and eight-foot high.

(Whereupon Court adjourned until 2 P. M., the same day, when Court reconvened pursuant to adjournment.) [471—431]

Mr. BAYLESS.—I don't think I have any more questions to ask Mr. James.

Mr. GUNNISON.—I haven't any more.

(Witness excused.)

Mr. BAYLESS.—Call Mr. Messerschmidt.

Mr. GUNNISON.—Wait a minute. We didn't apprehend that counsel was going to finish with Mr. James so quickly. We would like to have about five minutes to get some records. We might say that we want to get a couple records from Mr. Marshall's

office, but Mr. J. B. Marshall is right in the midst of a trial—

The COURT.—I cannot have this Court wait on Judge Marshall. Haven't you any other witness you can put on the stand?

Mr. GUNNISON.—Call Mr. Ewing. [472—432]

[Testimony of S. H. Ewing, for Defendant.]

S. H. EWING, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Ewing, have there been two surveys of the Pacific Coast Company's tract?

A. There has, to my knowledge.

Q. How were the blocks, the two waterfront blocks at the easterly end, or down-channel end, of the tract numbered in the first survey, if you remember?

A. In the first survey they weren't numbered.

Q. Lettered then—I don't mean the beach, I mean the upland. A. On the original survey?

Q. Yes, sir.

A. They were in letters.

Q. What were those two easterly blocks?

A. S and T, I think they were.

Q. In the resurvey how have those been renumbered? A. They are three and four in block three.

Q. Covering what?

A. The two easterly lots, the easterly division.

Q. They were formerly covered by block T?

A. By block T.

(Testimony of S. H. Ewing.)

Q. And is part of the block S in the new block three?

A. Practically all of it is in block three.

Q. What is the lot in the old block S and now part of the block three that is on the upland above the westerly end of the James' approach?

A. That is Lot One in Block S. [473—433]

Q. And it is lot what in block three?

A. Lot two in block three.

Q. Now, in the new survey has any part of the old Block T been dedicated as a street?

A. Not as a street; as a stairway, four-foot stairway.

Q. Where is that?

A. That is on the south or easterly end of the plat.

Q. How wide is that? A. Four feet.

Q. You are the agent of the Pacific Coast Company? A. I am.

Q. Have lots one and two of the old Block T, or three and four of block three, been sold?

A. They have.

Q. Have lots one—a lot which was formerly Lot one of Block S, and is now Lot two of Block three been sold? A. It has, the upland.

Q. So that the Pacific Coast Company is not the owner of any of those now?

A. Well, they were sold on contracts; no deeds have been passed.

Q. But contracts for deeds have been passed?

A. Contracts for deeds are in existence now.

Q. The entire waterfront which extends in front

(Testimony of S. H. Ewing.)

of the whole of the Pacific Coast Company's upland claim, known as the Pacific Coast Addition at Juneau, has been platted?

A. The waterfront part of it?

Q. Yes, sir.

A. Yes, sir, the survey of it was made.

Q. That is known as Block One? A. Yes, sir.

Q. Have either lots—I will withdraw that—what are the waterfront [474—434] lots that have been platted and numbered on that plat and what is the block—

The COURT.—Which plat is that?

Mr. GUNNISON.—That is Plaintiff's Exhibit 19, I think.

Q. What are the numbers on that plat of the blocks—what are the numbers of the lots on that plat which cover the ground included or the ground in controversy here?

A. Ten, eleven, twelve, thirteen, fourteen and fifteen—and part of fifteen and not all of ten either.

Q. Have those been sold?

A. There is an agreement to sell them pending settlement of this present lawsuit.

Q. Isn't there a deed to Mr. Messerschmidt from the Pacific Coast Company for at least part of this ground already on record? A. I believe there is.

Q. How much of that? A. Of what?

Q. Of this ground has been deeded to Mr. Messerschmidt?

A. One lot; I don't remember whether it is fourteen or fifteen.

(Testimony of S. H. Ewing.)

Q. Have there been deeds for any other of those lots included in this ground made?

A. The ground in dispute?

Q. Yes, sir.

A. Not that I am aware of.

Q. But there have been contracts made with others?

A. I think Mr. Messerschmidt has an option on one of the other ones; I don't remember whether it was fourteen or fifteen.

Q. How much of Lot 15 is in controversy—Lots 15 and Lot 10?

A. My understanding is where the ground joins this street?

Q. Yes, sir.

A. I don't remember exactly; I think it is about—somewheres around thirty feet of Lots 15 and 10.
[475—435]

Q. And one of those lots has been conveyed to Mr. Messerschmit and he has the option on the other?

A. Yes, sir; that is covered by an agreement pending the outcome of this suit.

Cross-examination.

(By Mr. BAYLESS.)

Q. What is the situation with reference to any reservations of the littoral rights to these lots conveyed?

Mr. GUNNISON.—We object to that as not the best evidence.

The COURT.—Do you mean what are the reservations in the deeds?

(Testimony of S. H. Ewing.)

Mr. BAYLESS.—In favor of the company with reference to these options.

The COURT.—You mean there are reservations in the writings about conveying the land?

Mr. BAYLESS.—Yes, sir.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Ewing, has the Pacific Coast Company conveyed any of the property desired to be used by it in its contemplated wharf site?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, as calling for a conclusion, and is not proper cross-examination.

The COURT.—Objection overruled

A. They have not.

Q. (By Mr. BAYLESS.) Has any of this property, either uplands or tide lands, been absolutely sold by the company to any person?

Mr. GUNNISON.—We object to that on the ground that it is irrevelant, incompetent, and immaterial, and not the best evidence. The instruments themselves, contracts or deeds, are the [476—436] best evidence.

The COURT.—If the question has relation to the writing, of course it isn't the best evidence. Do you mean "Have there been reservations in the writings conveying this property"?

Mr. BAYLESS.—No—"Have there been any absolute deeds passed for these uplands or tide lands."

Mr. GUNNISON.—We object to that, as the ques-

(Testimony of S. H. Ewing.)

tion calls for an answer from the witness which is a conclusion of law—whether the deeds are absolute or otherwise—and the instruments themselves are the best evidence.

Q. (By the COURT.) Are there any instruments of writing evidencing these conveyances from the Pacific Coast Company to anybody else?

A. Upon the uplands?

Q. Uplands or tide lands?

A. There are deeds and contracts for deeds.

The COURT.—They are the best evidence, Mr. Bayless.

Mr. BAYLESS.—Certainly; I merely wanted to ask him this:

Q. Are those instruments deeds or contracts for deeds? A. They are both deeds and contracts.

Mr. GUNNISON.—We object on the ground that the instruments are the best evidence.

The COURT.—Objection sustained.

Q. (By the COURT.) Mr. Ewing, did I understand you to say that lots 13, 14 and 15 are no longer owned by the Pacific Coast Company? A. No, sir.

Q. What did you say with reference to those lots on Plaintiff's Exhibit 19?

A. The lots in dispute are 10, 11, 12, 13, 14 and 15, and just a part of 15 and 10.

Q. Part of 15 and part of 10 have been conveyed away?

A. No, they are in dispute—that is, two have been conveyed. [477—437]

Q. Speaking now of Plaintiff's Exhibit 19, has lot

(Testimony of S. H. Ewing.)

13 been conveyed? A. It has not.

Q. Has lot 14 been conveyed? A. Yes, sir.

Q. Has lot 15 been conveyed? A. Yes, sir.

Q. Has lot 10 been conveyed? A. No, sir.

Q. Has lot 11 been conveyed? A. No, sir.

Q. Lot 12? A. No, sir.

Q. Lot one in Block T of the uplands—has that been conveyed?

A. At the present time that is Lot four in Block 3; that is, in the original survey one and two in T, and now it is three and four in Block three.

Q. Have lots three and four been conveyed?

A. Contract for a deed.

Q. Has Lot 2 in Block 3 been conveyed?

A. By contract for a deed.

The COURT.—That is all.

Q. (By Mr. BAYLESS.) Do you know whether or not, Mr. Ewing, any of this property had been contracted to be sold prior to the institution of this suit?

Mr. GUNNISON.—We object to that as the instruments themselves are the best evidence.

The COURT.—Objection overruled.

A. All that had been.

Q. Contracted to be sold prior to the time this suit was commenced? A. Yes.

Mr. BAYLESS.—That is all.

(Witness excused.) [478—438]

[Testimony of J. B. Marshall, for Defendant.]

J. B. MARSHALL, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Marshall, you have been called heretofore as U. S. Commissioner and Ex-officio Recorder for the Juneau Recording Precinct? A. Yes, sir.

Q. Will you please state what this is?

A. 24 deeds, records—

Q. Of your office? A. Yes, sir.

Q. Will you kindly turn to page 13 of that book and state what is recorded there?

A. That is a deed from the Pacific Coast Company to Gustav H. Messerschmidt.

Q. Covering what property?

A. Lot fifteen in block one of the Pacific Coast Addition to the Town of Juneau.

Q. Under what date?

A. The deed is dated the 10th of May, 1913.

Mr. GUNNISON.—We offer that in evidence and request permission to substitute a certified copy.

The COURT.—Any objection?

Mr. BAYLESS.—Just on the ground of its immateriality.

The COURT.—Objection overruled. You may have permission to substitute a certified copy.

(Admitted in evidence and marked Defendant's Ex. "B.")

Q. (By Mr. GUNNISON.) Will you look at this book and state what that is?

(Testimony of J. B. Marshall.)

A. Book of Trustee's Deeds. [479—439]

Q. Is that one of the records of your office?

A. Yes, sir.

Q. Will you look at page 645 of that book and state what it is?

Mr. BAYLESS.—What is the page?

Mr. GUNNISON.—It is right in the last of the book.

Q. Is that instrument or plat a record of your office? A. Yes, it forms part of the records.

Q. Just state what that is, will you please?

A. It is a plat of the Pacific Coast Addition to the City of Juneau, dated the 28th day of February, 1913. containing a description of the Pacific Coast Addition and an acceptance by the City of Juneau and the dedication by the Pacific Coast Company of the streets and alleys shown on the plat.

Q. Under what date is that dedication made?

A. Twelfth day of February, 1913, and acknowledged.

Mr. GUNNISON.—We offer that in evidence, your Honor.

Mr. BAYLESS.—No objection.

The COURT.—Well, you will have to have a blue-print made or a tracing and substitute it for this.

Mr. GUNNISON. We will have a certified copy of the blue-print or tracing made of it. That is all, Mr. Marshall.

(Admitted in evidence and marked Defendant's Ex. "C.")

Q. (By Mr. BAYLESS.) Mr. Marshall, I call

(Testimony of J. B. Marshall.)

your attention to the deed from the Pacific Coast Company to Mr. Messerschmidt and ask you to read the third from the last paragraph.

The COURT.—Is that the one that is already in evidence?

Mr. BAYLESS.—Yes, but I would like to call your attention to it now.

A. (By the WITNESS.) “And the grantee covenant that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of abutting upon or adjacent to, said described premises now or hereafter granted by any public authority shall pass and inure to the benefit of the grantor, its successors and [480—440] assigns, without further conveyance and this covenant shall run with the land above conveyed and be binding upon all subsequent owners and occupants thereof.”

(Witness reading.)

Mr. BAYLESS.—That is all.

(Witness excused.)

Mr. GUNNISON.—We rest. [481—441]

[Testimony of Gustav H. Messerschmidt, for Plaintiff (in Rebuttal)].

GUSTAV H. MESSERSCHMIDT, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name?

A. Gustav H. Messerschmidt.

(Testimony of Gustav H. Messerschmidt.)

Q. Where do you reside? A. Juneau.

Q. When did you first come to Juneau, Mr. Messerschmidt? A. In April, 1899.

Q. Have you resided in Juneau ever since?

A. Yes, sir.

Q. Have you made this your home?

A. I have made this my home.

Q. Do you know the piece of property in controversy between the Pacific Coast Company and Mr. James? A. I do.

Q. When did you first become acquainted with that property?

A. Well, the first time it was in May '99.

Q. What was the situation with reference to that property at that time?

A. I was looking for a location to put some wood on that I used for the bakery.

Mr. GUNNISON.—We desire at this time to object to any further evidence in the case on the part of the plaintiff, on the ground, first, that it now appears in the evidence that the plaintiff was not the owner either of the upland or of the ground in controversy; that it has all either been deeded away or contracts entered into for the sale of it to other persons and that they are not the proper party in interest. [482—442]

The COURT.—The objection will be overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) What, if anything, did you do upon this particular piece of land, Mr. Messerschmidt, in 1899?

(Testimony of Gustav H. Messerschmidt.)

A. Well, I was looking for—

Mr. GUNNISON.—We object to that as not proper rebuttal. So far as we have gone back in our case in chief, is 1900. It was their case in chief to develop anything up to 1900.

Mr. BAYLESS.—I will state, if the Court please that I anticipate being able to prove a chain of circumstances beginning with 1899 more or less connected with our case; for that purpose, I have started in 1899.

The COURT.—Is it a chain of circumstances that will rebut anything?

Mr. BAYLESS.—I apprehend that it will.

The COURT.—What will it rebut?

Mr. BAYLESS.—It will rebut Mr. James' assertion that he exclusively used this beach from 1900 on down.

The COURT.—How is it going to be rebuttal to prove that somebody occupied it in 1899, a year before 1900?

Mr. BAYLESS.—It isn't proper rebuttal as to that, if the Court please. We propose to show that Mr. Messerschmidt used this beach in 1899, 1900, and perhaps some other years.

The COURT.—What is the use of going back of 1900, because there is nothing to rebut prior to 1900.

Mr. BAYLESS.—All right, sir, I will take an exception to that and ask leave to be permitted to ask it later should it appear relative at that time.

The COURT.—We will pass on it when it arrives.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt,

(Testimony of Gustav H. Messerschmidt.)

what, if anything, did you do upon that property in the year 1900?

A. I brought some wood in the spring of 1901. To put some wood up [483—443] there, cord-wood.

Q. Did you do anything with reference to the use of this piece of beach in 1900?

A. No, I had a little wood, but not much, perhaps two cords in 1900.

Q. Did you obtain permission to use that beach from any person?

Mr. GUNNISON.—We object to that question as leading.

The COURT.—Yes, it is leading.

Mr. BAYLESS.—I will reform it.

Q. Mr. Messerschmidt, how did you happen to go upon that particular piece of property?

A. Well, I was informed that it was the Pacific Coast Company's property and the first talk was with Mr. Hart.

Q. Who was he?

A. He was then in the office of the Pacific Coast Company. And then when I made the location I put the wood on there—Dautrick was there then.

Q. What, if any, arrangement did you have with Mr. Hart?

A. Well, he told me I could use it, providing I would make no claim to the ground.

Q. That was in what year?

A. That was in 1900.

Q. Well, did you use this piece of beach land in 1900?

(Testimony of Gustav H. Messerschmidt.)

A. Perhaps two weeks; I had a couple cords of wood on in 1900.

Q. Where, with reference to the present gridiron claimed by Mr. James, was that situated?

A. Right behind it.

Q. Did you observe—

The COURT.—Just a moment. What do you call “behind it”?

A. Well, where the present street goes through now.

Q. Between the present gridiron and the street?

A. Yes.

Q. (By Mr. BAYLESS.) Did you see any evidence of the beach having [484—444] been cleared of boulders or driftwood? A. No.

Mr. GUNNISON.—We object to that question as leading and ask to have the answer stricken.

The COURT.—The answer may be stricken. What is your objection?

Mr. GUNNISON.—It is leading.

The COURT.—Very well, reform your question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, will you describe the appearance of the beach in 1900—describe how it looked to you with reference to boulders or driftwood, or any structures or anything?

A. Well, it looked like it looks now—no street, no gridiron, no nothing.

Q. Was a permanent structure there at that time?

A. No, nothing.

Q. (By the COURT.) What time, in 1900?

(Testimony of Gustav H. Messerschmidt.)

A. In 1901.

Q. (By Mr. BAYLESS.) What part of the year 1901?

A. Well, I think it was perhaps in February, March—something like that.

Q. How long did you use this beach in 1901?

A. Well, till all that wood was used up; there was about forty-five cords there.

Q. How long was that?

A. Perhaps a year and a half.

Q. Did you have cordwood upon that beach for a year and a half? A. Yes.

Q. Beginning at what time; was it 1900 or 1901?

A. In 1900 it was only there a couple weeks.

Q. And in 1901 you put forty-five cords on the beach? A. Yes, sir.

Q. And how long did that stay on the beach?
[485—445]

A. Perhaps a year and a half—until it was all burnt up.

Q. Where, with reference to the uplands or tide lands was this wood situated?

A. Well, right where the present gridiron is located—put the wood on the beach there so the June tide wouldn't take them out, but never had enough out, so it was on dry land practically.

Q. How did you get the wood into this piece of beach? A. We drove along the beach.

Q. Drove to and from that beach for your wood?

A. Yes.

Q. Where did the wood come from, in the Sheep Creek direction?

(Testimony of Gustav H. Messerschmidt.)

A. Between Juneau and Sheep Creek on the mountain side.

Q. How did it come?

A. It was cut and rolled down the hill in four-foot lengths and split on the beach.

Q. Was it brought up in rafts or brought up on the beach in wagons? A. Rafts.

Q. Where, with reference to the present gridiron were those rafts landed?

A. Just about in there, that land.

Q. And you piled them up? A. Yes.

Q. Most of it on the tide lands and part on the up-lands?

A. Yes, on the line to protect it from the average tide.

Q. Did you see any evidence of any occupation on that particular piece of beach by Mr. James?

A. No.

Mr. GUNNISON.—We object to the question as leading and move to strike his answer.

The COURT.—The answer will be stricken; reform the question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, did you see Mr. James in and [486—446] about that particular piece of property in 1900?

Mr. ROBERTSON.—Object to that as leading.

The COURT.—Yes, it is just as leading as the other question. Still, I don't know, Mr. Robertson, how he would ask that kind of a question when the thing you want to find out is whether a person saw another person.

(Testimony of Gustav H. Messerschmidt.)

Mr. ROBERTSON.—I should think he would say: “Who did you see on the property and what evidence did you see of occupation?”

The COURT.—This particular question is the one objected to: “Did you see Mr. James?” Objection overruled.

A. I saw him one time bring blocks for the tunnel up here—square blocks.

Q. (By Mr. BAYLESS.) Where did—what did you see Mr. James doing?

A. He drove them there and right in front of my wood and hauled them away up in the Basin.

Q. What, if anything, did you see with reference to any sign of occupation by anyone?

A. No, not at that time.

Q. What have you to say with reference to the beach having been cleared of boulders or driftwood?

A. No, nothing cleared.

Mr. ROBERTSON.—Object to that as leading and suggestive—he is getting right back to “Did you see any boulders cleared off?”

The COURT.—“What, if anything, did you see with reference to boulders?”

Mr. ROBERTSON.—That wasn’t the question.

Mr. BAYLESS.—With reference to boulders or driftwood being cleared off the beach.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Do you understand that question, Mr. Messerschmidt? [487—447]

A. In regard to boulders? Well, ordinary rough beach like any other beach; nothing cleared or any-

(Testimony of Gustav H. Messerschmidt.)

thing improved on it.

Q. Is there any difference in the appearance of that beach at the present time than when you first saw it?

A. With the exception that the street goes through, and that gridiron and that stuff, but the other is no improvement on it, no.

Q. Was there any evidence that this beach had been cleared of boulders or driftwood?

Mr. ROBERTSON.—Object to that as leading.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, how long did you use this particular piece of beach?

A. Well, in 1903 we got the last load of wood from Lemon Creek.

Q. How frequently did you have occasion in 1900, one, two, and three to be upon this piece of property?

A. [Oh, perhaps once a week anyhow, I made a trip to look after my wood.

Q. What have you to say about anyone else being on the ground there?

A. I didn't notice anyone particularly—not permanent that would come. Sometimes they would tie up a boat like one Indian who had his canoe in there all the time behind my wood-pile.

Q. Did you see anybody else there?

A. No; in 1903 I see street planks there off a scow.

Q. Did you see anyone landing lumber there during that period of time?

A. Well, they were taking it off the scow onto the beach.

(Testimony of Gustav H. Messerschmidt.)

Q. Who was doing that?

A. Well, it was said it was delivered by Mr. James to the Juneau City.

Q. Did you see Mr. James on that ground frequently in 1903?

A. I didn't see him personally myself and it was in the evening paper that the city bought the street planks in Douglas and that the Juneau merchants can go hungry— [488—448]

Mr. GUNNISON.—We move to strike—well, all right.

Q. (By Mr. BAYLESS.) How frequently did you see Mr. James landing lumber on this property in 1903?

A. Well, it was twice that I seen him—that he had a scow there.

Q. Can you mention the names of any other persons there?

A. No, they were laborers. They are not here any more, I guess.

Q. What did you say with reference to having a conversation with Mr. Dautrick?

Mr. GUNNISON.—He didn't say anything about that.

Mr. ROBERTSON.—We object to that as not being binding on the defendant, is hearsay, and comes from their own witness, and it is leading. He said something about Mr. Hart.

The COURT.—How about that, Mr. Bayless?

Mr. BAYLESS.—I was under the apprehension that Mr. Dautrick gave him permission.

(Testimony of Gustav H. Messerschmidt.)

A. He did, the second time.

Mr. GUNNISON.—We move to strike that.

The COURT.—Ask him the direct question and then it can be objected to and the matter will be passed upon.

Mr. BAYLESS.—I thought he said that.

Q. Did you have any conversation with Mr. Dautrick with reference to this property? A. I had.

Mr. GUNNISON.—We move to strike his answer.

The COURT.—It will be stricken.

Mr. GUNNISON.—And we object to any conversation between this man and Mr. Dautrick as not in any way binding on the defendant, is not rebuttal testimony, and it is incompetent, irrelevant, and immaterial. Mr. Bayless was permitted to show acts of ownership, if that is what he is getting at, in his case in chief and this is another attempt—
[489—449]

Mr. BAYLESS.—It is a whole lot more than that, because Mr. James has pretended to prove an exclusive possession from 1900. I propose to show by this witness that for at least two or three years Mr. James didn't have exclusive possession and how this witness' possession came about.

The COURT.—You can show that instead of Mr. James having exclusive possession, this witness has had possession. How has this conversation anything to do with it?

Mr. BAYLESS.—It is merely preliminary as to what the conversation was.

The COURT.—Of course, it is preliminary to what

(Testimony of Gustav H. Messerschmidt.)

the conversation was, but what the conversation was is not competent. Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, did you claim this particular piece of property?

Mr. ROBERTSON.—We object to that as not the best evidence, irrelevant, incompetent, and immaterial, not binding on this defendant whether or not Mr. Messerschmidt claimed this property, and is indefinite as to time.

The COURT.—You may ask this man whether he claimed this property through Mr. James in any way,—whether Mr. James gave him any permission, or whether he was an occupant of the property in hostility to Mr. James, because that would be rebuttal.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt did Mr. James give you any permission to use this beach? A. No.

Q. Did you recognize that Mr. James had any rights to that beach? A. No, not at all.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant, and immaterial, calls for a conclusion, is not rebuttal as far as I can see, and, furthermore, it wouldn't be binding on Mr. James as to whether or not Mr. Messerschmidt recognized his claim. [490—450]

The COURT.—It would be simply dilating a little on the question that this man occupied the property in hostility to Mr. James. I think you have developed that fact already by this witness, Mr. Bayless.

(Testimony of Gustav H. Messerschmidt.)

Mr. ROBERTSON.—Exception.

Q. (By Mr. BAYLESS.) Was your possession hostile to Mr. James?

Mr. ROBERTSON.—Same objection to all this line of questions.

The COURT.—I will permit him to answer that question, but I think you have about gone far enough.

Mr. ROBERTSON.—That calls for a conclusion of the witness. It is not the question your Honor ruled on at first.

The COURT.—Yes, but that objection wasn't made until you made it now, that it calls for a conclusion of the witness. I was not passing on that objection. If you object to it on the ground—Q. Do you know what hostile means?

A. I do.

The COURT.—Very well, you may ask him the question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, was your possession hostile to that of Mr. James?

A. Not exactly, no.

Q. What was it?

Mr. ROBERTSON.—We object to that. He has answered the question and we object to any further interrogation along that line. He said his possession wasn't hostile to Mr. James in answer to the question.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Well, what did your possession amount to?

Mr. ROBERTSON.—Object to that as irrelevant,

(Testimony of Gustav H. Messerschmidt.)
incompetent, and immaterial, as calling for a conclusion, and is argumentative.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. I entered into contract for the two lots. [491—451]

Mr. ROBERTSON.—We object to that as not responsive.

The COURT.—It will be stricken out.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, do you know anything about this property from 1903 down to August, 1913? A. Yes, I do.

Q. Do you know who, if anyone, occupied this beach in 1904?

A. Well, most anybody that wanter to tie a boat. There was no float that way nowheres.

Q. Can you name any person or persons who used this beach in 1904?

A. Well, I don't know; most of them people have gone; there is very few people that were here in 1904.

Q. What have you to say with reference to Mr. James using this beach in 1904?

A. Well, I didn't see him much in 1904.

Q. How often were you down there in 1904?

A. Oh, once a week, two or three times.

Q. What have you to say with reference to Mr. James landing scows or rafts there in 1904?

A. Once or twice he landed a scow there—didn't land much at that time.

Q. Were there any structures on the beach in 1904?

A. No, I didn't see any.

(Testimony of Gustav H. Messerschmidt.)

Q. Do you know when the first structure was erected on that beach?

A. First one when Perseverance lumber came here; some one put a gridiron there.

Q. Do you know what year that was?

A. I think it was 1905.

Q. Do you know who erected that gridiron—was it a gridiron or a platform?

A. Well, I do not know; it was a couple of posts planked over driven in there.

Q. Do you know who put that up? [492—452]

A. No, not exactly. I know they brought the lumber for the Perseverance Stamp Mill.

Q. Do you know where that lumber came from?

A. Yes.

Q. Where? A. Wrangell.

Q. Did you ever see anyone occupy this platform?

A. The Perseverance Company used it, taking lumber off.

Q. Did you ever see anybody else use that?

A. No, not particularly.

Q. Prior to the time this platform was erected, was there any structure on the beach?

A. I don't know of anything being there.

Q. Did you have occasion to go down there frequently? A. Yes.

Q. What was the occasion?

A. I used to go down there with bread.

Q. Well, do you know when the next structure was put on this piece of beach, the next building, gridiron or platform?

(Testimony of Gustav H. Messerschmidt.)

A. The next thing there was a walk built from the street, so you could get down with the team on the westerly side.

Q. Was the plank street put through there before the platform was built?

A. Yes, about 1906, I think; that was built down there in 1907 from the street down to the gridiron.

Q. The approach? A. Yes.

Q. Well, do you know when the gridiron which Mr. James now claims was built?

A. No, about 1905 there was a gridiron built there, I know that much.

Q. Do you recollect any difference in appearance between that gridiron that you saw there in 1905 and the one which Mr. James is now occupying? [493—453] A. I think it is a little bigger than it was.

Q. What have you to say with reference to its position on the ground?

A. About in the same position.

Q. Mr. Messerschmidt, do you know when the other approach to this gridiron was built? I mean the one toward the sawmill.

A. Eastely side—I think about 1909 or 1910.

Q. 1909 or 1910.

A. I think it was 1910, maybe 1911. It ain't very long since that old walk was built.

Q. What is the arrangement that you have with the Pacific Coast Company with reference to the purchase by you of one of these lots—lot 15 in Block 1 of the Pacific Coast Addition?

Mr. ROBERTSON.—We object to that as not the

(Testimony of Gustav H. Messerschmidt.)

best evidence. I presume he is referring to the instrument itself.

Mr. BAYLESS.—I am not referring to the instrument itself—I want to know what the arrangement is between Mr. Messerschmidt and the Pacific Coast Company.

Mr. ROBERTSON.—We object for the same reason and it is irrelevant, incompetent, and immaterial.

Q. (By the COURT.) Has that arrangement between you and the Pacific Coast Company been reduced to writing? A. Yes, it is in writing.

The COURT.—Very well—the writing is the best evidence.

Mr. BAYLESS.—All right. That is all.

Cross-examination.

(By Mr. ROBERTSON.)

Q. What was your business in 1900?

A. Bakery.

Q. You ran the bakery all the time?

A. Yes. [494—454]

Q. You spent quite a good deal of the time on the beach from 1900 up to this time?

A. Well, I deliver bread down there.

Q. Now, Gus, do you think your recollection is pretty clear at this time on what has taken place on that particular piece of ground from 1900 up to the present time? A. Yes, pretty clear.

Q. And you think at this time you can state positively just what has taken place during the various years on that piece of tide lands?

(Testimony of Gustav H. Messerschmidt.)

A. Well, just what I have noticed. There might have been lots of things I haven't seen, but I noticed what I stated.

Q. You said, I believe, that the wood which you brought in there was put in behind the gridiron, was it not?

A. There was no gridiron when I had wood there.

Q. But it was put in behind where the present gridiron is now? A. Yes.

Q. Do you mean towards the sea or towards the street? A. Towards the street.

Q. You are positive of that? That is your recollection at this time. You are just as positive of that as you are of any other fact that you have testified to, that the wood stood closer to the street than the present gridiron?

A. Well, there was no street at that time.

Q. But it stood closer to where the present street is? A. Yes.

Q. Then if you testified on the preliminary hearing that the wood was in front of the gridiron, you were mistaken?

A. Well, I don't know—in front of the gridiron—it depends upon which way you approach the gridiron.

Q. Well, you said behind here to-day.

A. Well, if you come from the water it is in front and from the other side it is behind—that is the way to figure it. [495—455]

Q. Which way were you coming in the preliminary hearing, do you remember? If you stated right in

(Testimony of Gustav Messerschmidt.)

front at the preliminary hearing, which way do you mean you were coming? Anyhow, in one of those statements you were incorrect—it was either in front or behind and couldn't be both—which one was it?

Mr. BAYLESS.—We object to that as argumentative.

The COURT.—Yes, it is slightly argumentative.

Q. (By Mr. ROBERTSON.) Well, now, Gus, in 1900 you had two cords of wood there?

A. A few cords.

Q. Well, about how many?

A. Four or five cords.

Q. And how many cords did you burn a week in your bakery?

A. Oh, about two or three cords—it just depends.

Q. And you had about how many, did you say, on the beach?

A. Five cords or something like that.

Q. Five on the beach? A. Yes.

Q. That you were using in your bakery?

A. Yes.

Q. Did you use wood that summer in the bakery?

A. Yes.

Q. As soon as you got it on the beach, did you commence using it? A. Not right away.

Q. How long did it lie there?

A. I couldn't tell you exactly. It had to be seasoned first to burn.

Q. You went down pretty frequently to see that nobody stole it? A. Exactly.

Q. How often did you go down?

(Testimony of Gustav Messerschmidt.)

A. About once a week.

Q. To see that nobody got those five cords of wood?

A. Yes. [496—456]

Q. Did you have anybody there to watch it?

A. No; I told several people to look out for it.

Q. You went down in the forenoon?

A. Yes, generally in the forenoon.

Q. Did you say you went always in the forenoon?

A. Most of the time, yes.

Q. Whereabouts did you put that wood with reference to line of mean high tide—did you put it on the beach or up on the upland where the water would not reach it?

A. Well, we had to get the first two rows before the June high tide comes.

Q. And what months did you put it there?

A. In the spring-time, March.

Q. I am talking about the first five cords now—not the forty-five cords, but the five cords.

A. The five cords, I couldn't tell exactly; it was built alongside the Indian's canoe there—he had a canoe and a shack back there, too.

Q. Did you put it on the tide land?

A. Just where the tide would reach it and then I had to watch it.

Q. And when you walked down that road, did you go down on high tide or low tide ordinarily?

A. Low tide.

Q. Well, then, Mr. Messerschmidt, did you say you always went down there at low tide?

(Testimony of Gustav Messerschmidt.)

A. Mostly at three-fourths. At extreme high tide you couldn't go.

Q. Did you see Mr. James there in 1900?

A. Not personally.

Q. Did you see Mr. James' scow there in 1900?

A. I seen a scow discharging those blocks; I couldn't tell whether it was Mr. James' scow or not, but Mr. James was doing the work.

Q. That was in the summer of 1900?

A. Yes. [497—457]

Q. How many times did you visit that beach altogether in 1900? A. I couldn't tell you exactly.

Q. Once? Did you go down there once?

A. You mean all summer?

Q. Yes. A. I went down there more than that.

Q. Twice? A. No, sir; more than that.

Q. Three times?

A. No,—maybe three dozen times.

Q. You always went down when the tide was low?

A. Yes.

Q. Now, Mr. Messerschmidt, what kind of a beach did you say was down there at that time?

A. Rough beach, same as any beach.

Q. Have you seen the beach lately? A. Yes.

Q. Was it in the same condition that it is now?

A. Yes, the same; there wasn't much difference.

Q. There was no driftwood or big boulders on it at that time?

A. Well, there were boulders on it perhaps as big as a spittoon laying all along the beach.

Q. How about driftwood?

(Testimony of Gustav Messerschmidt.)

A. There wasn't much driftwood.

Q. Well, was there any driftwood so that you took note of it?

A. No, not much; when it was, I put it on my wood-pile.

Q. You would pick it up and pile it on your wood-pile? A. Yes.

Q. Now, Mr. Messerschmidt, what was your idea of selecting that particular place to land wood at?

A. It was a good place to land.

Q. Why was it a good place to land? [498—458]

A. Well, I could get in easy.

Q. How—on account of what? Why could you get in easy—how do you mean it was easy to get in, that is what I want to know?

A. Further on there was Billy Layton and them fellows and I didn't want anything to do with them, so I went in there.

Q. You went in because this beach was open and vacant?

A. Yes, and I got permission to go in there.

Q. Did you get permission before or after you went in?

A. The Indian had already piled it in there when I bought it.

Q. You bought it from the Indian? A. Yes.

Q. That was the first five cords?

A. That was in the year 1900.

Q. Then you didn't bring that wood up from Sheep Creek? A. That was later on.

Q. You only had 5 cords in the year 1900?

(Testimony of Gustav Messerschmidt.)

A. Yes.

Q. And you bought that on the beach? A. Yes.

Q. Did you notice the beach particularly that year?

A. Well, it looked to me to be a good place to use as a permanent wood place.

Q. You thought it was a good place? A. Yes.

Q. Well, now, Mr. Hart—after that five cords was bought you went and told him it was yours?

A. Yes, that I had bought it.

Q. Mr. Messerschmidt, if you said in your testimony in the preliminary examination that you had this conversation with Hart about the forty-five cords of wood, you are really mistaken at this time? [499—459]

A. I am not mistaken; there is nothing mistaken.

Q. I say: If you said in your preliminary examination that you had forty-five cords of wood in there at the time you had this conversation with Mr. Hart and you now say it was five cords of wood from the Indian, you were either mistaken then or are now?

A. If I am correct, I never mentioned Mr. Hart in my preliminary at all.

Q. But you mentioned about the forty-five cords, didn't you? A. Yes.

Q. Did you have two conversations?

A. Yes, when Mr. Dautrick was here too.

Q. I want to know if you had conversations on different occasions? A. Yes.

Q. And practically the same thing occurred?

A. Yes.

(Testimony of Gustav Messerschmidt.)

Q. How did you happen to bring the forty-five cords of wood in there?

A. Well, cut the logs on the mountain-side between here and Sheep Creek and rolled them down on the ice and raft them in and I wasn't there on the beach—

Q. Why did you pick out that particular beach—there is a lot of land along there, isn't there?

Mr. BAYLESS.—Object to that as argumentative.

The COURT.—Objection overruled.

A. Well, Mr. Dautrick had given me permission to use it.

Mr. BAYLESS.—We move to strike that as not responsive.

The COURT.—Yes, that may be stricken.

Q. (By Mr. ROBERTSON.) What I want to know is this—whether or not it was on account of the beach looking better to you that you picked that particular piece of beach, and just why it was you took that particular piece of beach instead of taking a piece of beach this way a little farther or down a little farther? I am [500—460] trying to get your reason for going into this particular spot?

A. Well, as you can see, there is a little knoll in there and it gives you a little more ground.

Q. Kind of a little bight?

A. Yes, above high-water mark.

Q. You noticed this bight and noticed the beach was freer of rocks and driftwood; is that not the reason you went in there?

A. No, I didn't have a raft in there, I didn't care.

Q. How many times did you go down there in 1901,

(Testimony of Gustav Messerschmidt.)

Mr. Messerschmidt? A. About once a week.

Q. And what time of day did you generally go?

A. Forenoon.

Q. You always went in the forenoon once a week?

A. Yes.

Q. What day of the week?

A. I couldn't tell you exactly that.

Q. But you remember you always went in the forenoon? A. Yes.

Q. And you say you went, as I understood it, at low tide? A. Half tide, low tide.

Q. But you always went in the forenoon?

A. Yes.

Q. You are positive of that?

A. Oh, once or twice in the afternoon, but as a rule in the afternoons I am in the shop.

Q. Well, can you say positively you always went in the forenoon?

A. Well, I couldn't say that exactly, positively.

Q. Well, how many times didn't you go in the forenoon? A. Well, I didn't count it.

Q. But you went in the forenoon regardless of what the stage of the tide was; is that the idea?

A. Well, when a fellow has got to go through—half tide you can [501—461] go through, three-quarters you can go, but full tide it was hard to go down.

Q. Then, as I understand, if on Monday there happened to be a full tide in the forenoon, you waited until the latter part of the week when it was half tide or low tide?

A. Yes; most of the time went down on low tide.

(Testimony of Gustav Messerschmidt.)

Q. You think you were down there about forty times in 1901? A. Yes.

Q. That would be once a week for every week in the year except twelve weeks that you were down on that beach summer and winter?

A. No, during the summer I went down there because I wouldn't have wood and I was getting short of wood and I watched them all along the beach to see whether somebody brought in wood.

Q. I thought you were delivering bread?

A. Yes, and looking for wood too.

Q. Who did you deliver bread to down there in those days? A. Oh, some bachelors.

Q. Well, how long did that forty-five cords last you at the rate of three cords of wood that you burned in your bakery?

A. I couldn't tell you, because I bought some out here from a man—bought a load at two places.

Q. You had some wood out here also?

A. Yes, and sometimes I would take from down here and sometimes down there.

Q. So you don't know how long it lasted?

A. Oh, perhaps, I think a year—perhaps a year and a half. I could tell you if I had my book here.

Q. What I am trying to get at is this, the number of times you visited the beach so as to find out whether you had occasion to see Mr. James down there? A. I can't tell you that.

Q. You don't mean to say that there weren't a great many times that [502—462] Mr. James might be landing scows and you not have seen him?

(Testimony of Gustav Messerschmidt.)

What I mean is: Do you mean to say that the only times that Mr. James had any rafts on that beach were the few times you saw him yourself?

A. No, I don't mean to say that.

Q. You mean that those were the occasions you saw him? A. I saw him, exactly.

Q. And he may have been there a good many times that you weren't present; is that your idea—what you mean?

A. He might have been there that I didn't know about; I didn't keep tab on him.

Q. Mr. James didn't ask permission of you to use this land? A. No.

Q. When you saw Mr. James bring those scows in there, you didn't run over to Mr. James, did you, and say: "Here, I have got authority to use this land—you keep off of here"? A. No, sir.

Q. You didn't say anything to him?

A. No, sir.

Q. You say the first structure was put on that beach in what year?

A. As good as I can recollect in 1905.

Q. Was there anything on the beach before 1905?

A. Not that I remember.

Q. Were there two piles there?

A. There were some other two piles.

Q. Were there two piles about in the middle of this piece of land in the year 1904?

A. Well, I don't know whether there were piles in the middle of this piece of land; I know there were posts setting out.

(Testimony of Gustav Messerschmidt.)

Q. You say positively that there were no posts there?

A. Not where the gridiron is—further out in the water.

Q. If Mr. Webster testified positively in this case that he drove [503—463] two piles for Mr. James there in the summer of 1904, would you be willing to swear positively that Mr. Webster was mistaken?

A. Well, I didn't pay any attention to those two piles.

Q. You didn't, as a matter of fact, pay close attention to that beach? A. No, just what I saw.

Q. Just what you saw, but you didn't pay particular attention to it?

A. After I got off with the wood, I didn't pay particular attention to it.

Q. And you don't want to say at this time, Mr. Messerschmidt, that if any of your statements contradict sworn statements of the other men in this case, that they are mistaken and you are correct, do you? A. Well, I couldn't answer to that.

Q. Well, what year was the first structure put on that beach, did you say?

A. As good as I can recollect, in 1905.

Q. Was there one structure or two structures on there in the summer of 1905?

A. I think there were three logs with braces on and—

Q. Was there just one structure or two structures in 1905? A. One.

Q. You are positive of that?

(Testimony of Gustav Messerschmidt.)

A. One structure in 1905; that is as good as I can recall.

Q. Well, but do you know whether there was one or more than one?

A. There was one, one gridiron.

Q. You will swear there was one gridiron?

A. Yes.

Q. Was there one platform besides one gridiron?

A. I don't think it was in 1905; it was built later.

Q. Just one gridiron and one platform?

A. That is as good as I recollect. [504—464]

Q. What part of the beach was that gridiron on?

A. Right where the present gridiron is, in the same spot.

Q. Who used that gridiron—who did you see using it?

A. That lumber that came over from Wrangell.

Q. Did you actually see that with your own eyes?

A. Yes.

Q. Now, Mr. Messerschmidt, if Mr. Webster and Mr. James and Frank Bach have already testified positively that there was a little platform and a little gridiron on that beach in the year 1905, do you want to say at this time that they are mistaken, and you are correct?

Mr. BAYLESS.—Object to that as being argumentative.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) What year was the road put through, Mr. Messerschmidt—I mean the plank road on down to the Jorgenson sawmill?

(Testimony of Gustav Messerschmidt.)

A. I think it was '6 or '7; I couldn't tell you exactly.

Q. Was the gridiron built there before that or after that?

A. The gridiron was there before the road was there.

Q. At any time after 1900 did Mr. James deliver you some lumber brought in over this tide land?

A. To me.

Q. Yes. A. No.

Q. You are positive of that?

A. Yes—not to me.

Q. You say you think the road was built in 1907?

A. I think in 1906 or 1907.

Q. And you say the gridiron was built before or after—I didn't catch your answer?

A. The gridiron was built before.

Q. This same gridiron that is in place there now?
[505—465]

A. Well, it looked like it just the same, I don't know; it might have been taken out and put in again, the same stuff, but it looks a little bigger, just like put another post onto it; that is how it appears to me.

Q. Mr. Messerschmidt, have you since that time—since you discontinued the use of where you had your cordwood down there, kept close watch and supervision over this piece of tide land; I mean have you given it especial attention?

A. Well, yes, I did, all of it down there.

Q. You have given that all especial attention?

(Testimony of Gustav Messerschmidt.)

A. Yes; I was looking for a piece to buy and put a float on to get my wood in.

Q. How long have you been looking for that?

A. Oh, for several years.

Q. Why didn't you buy this particular beach?

A. Well, I didn't think it was for sale.

Q. Why didn't you think so, Mr. Messerschmidt?

Mr. BAYLESS.—I object to that as immaterial.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) The last time you used this piece of beach land was in 1903, I understood you to say, Mr. Messerschmidt? A. Yes.

Q. Did you say the cordwood was put up above the line of high tide; that is, just so the tide washed up practically a foot, so to speak; is that what you mean? A. Yes.

Q. And that the cordwood was not put down where the water would flow over it?

A. Yes, we lost about eight cord of the Lemon Creek wood in June.

Q. This was some more wood you put there?

A. In 1903, yes.

Q. How many cords of wood did you have in 1903?
[506—466]

A. I think it was 1902, spring of 1902, had some from Lemon Creek.

Q. And it washed away?

A. Not all of it—six or eight cords.

Q. All of it washed away; that was done where the water came up? A. Yes.

Q. And after that you were very particular to put

(Testimony of Gustav Messerschmidt.)

the wood above the line of high tide?

A. Didn't set any more after that.

Q. You quit there in 1902?

A. Well, after that wood was used up we quit.

Q. But you said you just brought some wood from there in 1902? A. Yes.

Q. Was all that washed away?

A. No—about eight cords.

Q. Was that part of the forty-five cords?

A. No.

Q. Well, you said—you told us a while ago that you had only five cords on at one time and forty-five cords another time?

A. Yes, and in 1902 had that on from Lemon Creek?

Q. Then you quit? A. Then I quit.

Q. What time did you get it used up?

A. I think it must have been the fall of that year, or spring of the next year.

Q. Which do you think—the fall of 1902?

A. I couldn't tell you that exactly.

Mr. ROBERTSON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. You have a contract with the Pacific Coast Company? A. I have. [507—467]

Mr. ROBERTSON.—Object to that and move to strike the answer on the ground that it is not proper redirect examination. I haven't brought out anything of that kind.

(Testimony of Gustav Messerschmidt.)

Mr. BAYLESS.—I should have introduced it in chief, your Honor.

Q. Where is that?

A. In the vault up at Behrends.

Q. Can you get it and bring it over and read it to the Court?

A. I believe I can. Which contract do you mean?

Q. Any and all contracts you have with the Pacific Coast Company.

(Witness excused.) [508—468]

[Testimony of A. S. Dautrick, for Plaintiff (in Rebuttal)].

A. S. DAUTRICK, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. I believe you have been sworn? A. Yes, sir.

Q. You were the agent here from September, 1901, till September, 1903, for the Pacific Coast Company?

A. Yes, sir.

Q. Do you know who, if any one, occupied that— You know the property in controversy, of course?

A. Yes.

Q. Do you know who, if any one, occupied this piece of beach land during the time you were agent?

A. Yes.

Q. Just state who he or she was.

A. Gus Messerschmidt used it for a while for piling wood on the beach there; James used it for land-

(Testimony of A. S. Dautrick.)

ing rafts or scows of lumber, I think both, and people used it for tying up boats, fishing boats, there.

Mr. GUNNISON.—We object to the last part of the answer as not responsive—too general.

The COURT.—It seems to me that it is responsive—“Who used it?”—“James and Messerschmidt..”

Mr. GUNNISON.—Counsel asked who used it?

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Dautrick, are you sure that other persons besides Mr. James used this beach while you were agent?

Mr. GUNNISON.—We object to that on the ground that it is [509—469] leading, suggestive, argumentative, irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

A. I am.

Q. (By Mr. BAYLESS.) What have you to say with reference, then, to the possession of Mr. James as being exclusive?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and as calling for a conclusion.

The COURT.—Objection overruled.

A. Why, I can't say that his possession was exclusive; I looked upon it as temporary possession such as other people were exercising there.

Mr. GUNNISON.—We move to strike the answer as not responsive.

(Testimony of A. S. Dautrick.)

The COURT.—That part of the answer that says “looked upon it as temporary” will be stricken, but the rest is allowed to stand.

Q. (By Mr. BAYLESS.) Do you know how much of the time Mr. James used that beach while you were agent? A. I do not.

Q. Do you know—how frequently did you have occasion to see him using this beach while you were the agent?

A. Not very often. I might see him in town a great many times, but I can't say I saw him on the beach very often, although I knew he was using it.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You say you didn't see him on the beach very often though you knew he was using it?

A. Yes, sir. [510—470]

Q. And the only two persons who you are now able to name during the period of your agency are Mr. Messerschmidt and Mr. James?

A. Yes, sir, because the other ones were fishermen and Indians and temporary comers and goers, so I didn't get acquainted with them.

Q. How often did you visit that particular piece of ground during that time?

A. Not very often; I should say once a month.

Q. Thirty-six times in the three years?

A. I expect that is about as often as I was down there.

Mr. GUNNISON.—That is all.

(Testimony of A. S. Dautrick.)

Q. (By the COURT.) You say Mr. James used the beach? A. Yes, sir.

Q. Without any permission from the Pacific Coast Company?

A. I was instructed when I came here as agent that he had permission.

Mr. GUNNISON.—We move to strike that.

The COURT.—That will be stricken.

Q. You say that fishermen and men that have boats also tied up there and used it indiscriminately?

A. Yes, sir.

Q. Without any permission from the company?

A. Yes, sir.

Q. And you knew they were doing it?

A. Yes, sir.

The COURT.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Why was it you didn't object to these fishermen and others using this beach? [511—471]

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled; it is competent cross-examination on the question I asked.

A. Because so long as they were undertaking—taking no permanent occupation—the company had no objection; it was a matter of convenience.

Q. (By Mr. BAYLESS.) Why was it you didn't object to Mr. James occupying or using this beach while you were agent?

Mr. GUNNISON.—Same objection.

(Testimony of A. S. Dautrick.)

A. I can only say what I said to the Judge's question in regard to that.

The COURT.—If you didn't object on account of instructions you had, you may say so, but you need not say what those instructions were.

Q. (By Mr. BAYLESS.) If you had any instructions from the company with reference to Mr. James?

The COURT.—You can answer yes or no.

A. I had instructions.

Mr. BAYLESS.—Your Honor doesn't care to hear what those instructions were?

Mr. GUNNISON.—We object to the testimony of the witness with reference to his having had instructions and move to strike it on the ground that it is irrelevant, incompetent and immaterial, hearsay, and a self-serving declaration.

The COURT.—Objection overruled and the motion will be denied.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—That is all.

(Witness excused.) [512—472]

Mr. BAYLESS.—If the Court please, I would like to ask Mr. Dautrick a question and I will indicate what that question is at this time and state what I expect to prove. I would like to ask Mr. Dautrick if the reason for his not disturbing Mr. James was not on account of the fact of the company doing business with Mr. James and for that reason did not want to disturb him as long as he put no permanent improvements on the property and, in view of what

(Testimony of A. S. Dautrick.)

has transpired before, the Court is liable to be confused and take it for granted that the company did not disturb Mr. James because they thought Mr. James had a right to be there, or else that they had abandoned the property, and, in order to clear up that phase of the case, I would like to show the reasons why the company did not disturb Mr. James.

The COURT.—Is there any objection?

Mr. GUNNISON.—There is, sir. We object on the ground that it is incompetent, irrelevant and immaterial, and cannot in any way be binding on this defendant, and it isn't sufficient reason for failure to remove a person from ground that they claimed belongs to them, is self-serving, calls for a conclusion of the witness, and is hearsay.

The COURT.—What have you got to say to that, Mr. Bayless?

Mr. BAYLESS.—I think it is pertinent if the company did not disturb Mr. James while he was occasionally using this ground for the purpose of landing lumber on account of doing business with Mr. James and on account of their being disposed to permit him to use the ground provided there were no permanent improvements. It would indicate that the company had not abandoned the ground, as has been attempted to be shown.

The COURT.—If Mr. James acquired any rights by what he says he did, does he have any less right because the company considered that it was more to their advantage to let him stay there than to remove him and lose his business? Suppose I am [513—

(Testimony of A. S. Dautrick.)

473] doing business with you and getting some profit from it, but, notwithstanding the fact that I am doing business with you, I am occupying some of your property, occupying under a claim of right. Now, in order to get my business and not make any hostile feeling, you don't say anything about my occupying your property?

Mr. BAYLESS.—The Court misunderstands me—perhaps I haven't stated my position right. We propose to show that the company had no notice of Mr. James' adverse claim at that time and that the reason they permitted him to occupy the beach there was because they were doing business with him and he was not making any permanent improvements at that time.

Mr. GUNNISON.—Our objection goes to that and goes further that he continued to use it from that time up to the time this action commenced, and, from the testimony of witnesses already in the case, even from the plaintiff, it appears that they knew he was there and using permanent structures upon that beach.

Mr. BAYLESS.—I only propose to have Mr. Dautrick testify as to what transpired while he was here as agent.

The COURT.—Anything that you can bring home to Mr. James is competent, but the mental processes or the weighing of advantages or disadvantages that went on in Mr. Dautrick's mind, or the minds of the company, as to which it was more to their advantage to do, is a thing I don't think would be competent.

(Testimony of A. S. Dautrick.)

A. S. DAUTRICK, a witness sworn and recalled in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. I will ask Mr. Dautrick this question: While you were agent [514—474] were you aware of any claim of ownership by Mr. James adverse to the company?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

A. No, sir.

Mr. BAYLESS.—Your Honor will not permit me to ask the other question?

The COURT.—Not the way you make your offer.

Mr. BAYLESS.—Would your Honor indicate what sort of a question would be agreeable?

The COURT.—Well, there wouldn't be any question agreeable on that line to develop the things that come within your view of the case.

Q. (By Mr. BAYLESS.) Mr. Dautrick, was Mr. James attempting to make any permanent improvements on the ground while you were agent?

A. No, sir.

Q. Well, why was it that you didn't disturb Mr. James or prevent him from landing lumber upon the beach while you were agent?

Mr. GUNNISON.—That is objected to on the ground that it is irrelevant, incompetent, and imma-

(Testimony of A. S. Dautrick.)

terial. He calls now for a reason, some process—the operation of this witness' mind why he didn't do a thing. It calls for a conclusion we think.

Mr. BAYLESS.—I don't think that is the same mental process your Honor had reference to.

Mr. GUNNISON.—I understand it isn't, but it is another one.

The COURT.—Well, of course, this is not a jury case. I might let him state and bring that out. I can think about it afterwards.

Mr. GUNNISON.—He has already asked that question. [515—475]

The COURT.—It reads differently, Judge Gunnison.

Mr. GUNNISON.—Exception.

The COURT.—I have no intention of permitting Mr. Dautrick to give anything about the private business arrangements between the company and Mr. James. Now, if you have any other reason, I will permit you to answer it.

A. Because so long as he made no permanent improvements, there was no objection to it so far as the company looked at it, or I as agent—so long as he was not undertaking to occupy it permanently, because other people were occupying it temporarily as well.

Mr. GUNNISON.—Just a moment. In order to save our record, we move to strike it on the ground that it is irrelevant, incompetent, and immaterial, that *that* it is a self-serving declaration and not binding on the defendant.

(Testimony of A. S. Dautrick.)

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) Mr. Dautrick, was the piece of ground which Mr. James was using while you were agent claimed by the Pacific Coast Company?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not the best evidence; that it is not rebuttal and is too indefinite as to time.

The COURT.—It is not rebuttal.

Cross-examination.

(By Mr. GUNNISON.)

Q. Had you any reason to think that Mr. James was going to give that ground up, Mr. Dautrick?

A. I had no reason to think that it belonged to Mr. James or that he was undertaking to hold it.

Q. You had no reason to think so—you had no arrangement with Mr. James personally about the use of it? [516—476]

A. I had not personally, no, sir.

Q. For how long a period did he use that?

A. He used it off and on all the time I was agent.

Q. What do you mean by off and on?

A. I mean he didn't use it every day; as I remember, he would bring a raft or scow over when he had it sold on this side and discharge it there.

Q. But you didn't go down there but once a month?

A. I say I didn't. I know he didn't use it every day.

Q. How do you know?

(Testimony of A. S. Dautrick.)

A. Because, while I wasn't down to that piece of ground, I was down to the old Union Dock frequently and could see it and I know the common business conditions were such that he couldn't use it every day.

Q. How frequently did he use it?

A. That I don't know.

Q. Once a week?

A. It would be very foolish if I stated, because I don't know.

Q. Then whenever he had business he would use it?

A. That is it exactly.

Q. And simply because he didn't put structures there, you permitted him to continue to use it?

A. Just as we did with other people, Messerschmidt and others.

Q. And the others you are not able to name now?

A. Yes, sir.

Mr. GUNNISON.—That is all

(Witness excused.) [517—477]

**[Testimony of Gustav H. Messerschmidt, for
Plaintiff (Recalled in Rebuttal).]**

GUSTAV H. MESSERSCHMIDT, a witness sworn and recalled in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Messerschmidt, I hand you a paper and ask you to tell the Court what it is.

A. That is a contract between myself and the Pacific Coast Company.

(Testimony of Gustav Messerschmidt.)

Q. This is an original contract, is it?

A. Yes, it is an original contract.

Q. Is that your signature? (Indicating.)

A. Yes, sir.

Mr. BAYLESS.—We offer this in evidence.

Mr. GUNNISON.—May I ask a question, your Honor?

The COURT.—Proceed.

Q. (By Mr. GUNNISON.) Was this executed on the day it bears date? A. How do you mean?

Q. On the day it is dated. A. Certainly.

Q. And on that day there was also the deed which was put in evidence executed from the Pacific Coast Company to you?

The COURT.—Q. Which is this contract for— which lot, the inside or outside?

A. Lot fourteen.

Q. (By Mr. GUNNISON.) Where is that, on the inside?

A. On the easterly side I think it is, lot fourteen— this one here. This is a corner lot in here. (Indicating.)

Q. You had a deed for that?

A. Contract; this one I have a deed.

Q. But this one is a deed, isn't it?

A. This is a contract for a deed—not really a deed.

[518—478]

Q. There was an agreement for the deed executed at the same time it was?

A. Yes, something like that.

Q. For this particular lot? A. Yes.

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, and immaterial; that this is an agreement between the witness and the Pacific Coast Company, is not binding upon the defendant in this case in any way, and is not rebuttal of anything.

Mr. BAYLESS.—If the Court please, it is a circumstance which goes to show that the plaintiff has not divested itself of title to the property in dispute.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—I ask the privilege of reading this into the record. Q. This agreement is in escrow with Behrrends?

A. He got it in the vault.

Mr. BAYLESS.—I would ask the privilege of reading it in the record.

Mr. GUNNISON.—We object.

The COURT.—I think you are quibbling over something that is not very important—the thing is to get it before the party that is passing on the question. What difference does it make whether it is marked or read in the record?

(Mr. BAYLESS, reading:)
THIS AGREEMENT, made this 13th day of August, 1913, between the Pacific Coast Company, a corporation, the party of the first part, and G. H. Messerschmidt, the party of the second part, WITNESSETH:

WHEREAS, the second party has this day purchased from the first party that certain lot number 14 in Block 1 in the Pacific Coast Addition to the

(Testimony of Gustav Messerschmidt.)

Town of Juneau, Alaska, according to the plat thereof, and whereas said lot is being conveyed to [519—479] the said party of the second part by an agreement for a deed executed contemporaneously with this contract, and whereas certain portions of said lot are now in the use and possession of others who claim the right of possession as against the party of the first part, which right the party of the first part denies:

NOW, THEREFORE, it is agreed that the party of the second part shall pay fifteen hundred dollars (\$1,500), being one-half of the purchase price of said lot, the total price being three thousand dollars (\$3,000), for which deed of conveyance will be executed without warranty as to the possession or rights of other parties to the said lot, which said deed is executed contemporaneously with this contract. And the party of the first part agrees to place the said party of the second part in possession of said lot within six (6) months of this date, or so much of the same as is not now in the possession of other parties, and it is further agreed that if the party of the second part has any difficulty with any person or persons whatsoever in securing such possession or enter into the possession of the entire lot and occupying the same, whether such other parties claim title or not, then, and in that event, the party of the first part will return to the party of the second part the purchase price of the said lot, or so much thereof as has been paid, and the party of the second part will surrender, upon the return of said purchase price,

(Testimony of Gustav Messerschmidt.)

his possession to the party of the first part and deliver the deeds conveying title back to the party of the first part, deeds of conveyance to be of equal dignity with the deeds of conveyance hereby made by the party of the first part to the party of the second part; AND IT IS FURTHER AGREED, that, as soon as the party of the second part secures entire possession of the property herein described, he shall pay the remaining fifteen hundred dollars (\$1,500) due hereunder. [520—480]

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

THE PACIFIC COAST COMPANY,

By S. H. EWING,

Its Agent. [Seal]

G. H. MESSERSCHMIDT. [Seal]

Signed and sealed in the presence of:

WILLIAM S. BAYLESS.

S. HELLENTHAL.

United States of America,
District of Alaska,—ss.

This is to certify that on this 26th day of August, 1913, before me, the undersigned, a notary public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of the Pacific Coast Company, a new Jersey corporation, and the said H. S. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company hereto

(Testimony of Gustav Messerschmidt.)

as principal, and his own name as attorney in fact, freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal in this certificate the day first above written.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

Commission expires December 10, 1913.

The COURT.—Now, let the clerk mark it, so it can be identified at any time.

(Admitted in evidence and marked “Plaintiff’s Ex. 24.”) [521—481]

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, do you know whether or not the Pacific Coast Company has paid taxes on this lot for the last two years?

A. They have.

Mr. GUNNISON.—We object to that as not being the best evidence—from Mr. Messerschmidt, the party that apparently under that, according to Mr. Bayless’ contention, has no interest in this ground except a contract for a deed.

The COURT.—The question is: “Mr. Messerschmidt, do you know whether the company paid the taxes”? That is the question—“Do you know.” Objection overruled.

Mr. GUNNISON.—We move to strike the answer.

The COURT.—Very well. The question is “Do you know if the Pacific Coast Company has paid taxes for the last two years.”

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—We object to the question as incompetent, irrelevant, and immaterial—it doesn't matter.

Q. (By Mr. BAYLESS.) Do you know who paid the taxes for 1913 on it?

A. The Pacific Coast Company.

Mr. GUNNISON.—We move to strike.

The COURT.—Yes, strike that.

Q. (By Mr. Bayless.) Do you know who paid the taxes on it for 1913?

The COURT.—Say yes or no.

A. Yes, I know.

Q. (By Mr. BAYLESS.) Did you pay the taxes on it? A. I paid on one lot.

Q. Did the Pacific Coast Company refund it to you?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial,—no matter what the Pacific Coast Company refunded.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. And calling for a conclusion [522—482] of the witness as to what they did.

The COURT.—What is the conclusion, Judge Gunnison?

The question is: "Did they refund to him what he paid out." Where is the conclusion?

Mr. GUNNISON.—If that is the question, that is a different proposition, but counsel asked him if they refunded the taxes.

The COURT.—Where is the conclusion in that?

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—It might be a question of law whether they were refunding taxes or not—might have been something else or not.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Did they refund you the money you paid for taxes last year? A. Yes, sir.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. ROBERTSON.)

Q. When did they refund you the taxes?

A. Oh, I don't know; a couple of months later after I had them paid.

Q. Where is the deed, Mr. Messerschmidt, that is referred to in here as having been made on the same day as this? A. Right here.

Q. Did they refund the taxes after the fifteenth day of August, 1913, or before? A. After.

Q. Did you get this deed at the same time you got that contract? A. Yes, them two together.

Q. What day did you get this contract, Mr. Messerschmidt, on August 13th, which is the date in there, or on the date it appears in [523—483] here, August 26th, that you went before Mr. Bayless, Notary Public?

A. Well, I couldn't tell you exactly which date it was.

Q. Well, was it on August 13th or August 26th, 1913? A. I couldn't tell you.

Q. Was it after or before August 15, 1913?

(Testimony of Gustav Messerschmidt.)

A. I couldn't tell you; I know it was in August some time.

Q. Did you pay that fifteen hundred dollars?

A. Yes, sir.

Q. Have you got it back? A. No, sir.

Q. You paid the fifteen hundred dollars to whom?

A. To the Pacific Coast Company.

Q. To Mr. Ewing as agent?

A. To Forrest and Ewing.

Q. Did the Pacific Coast people put you in possession of that ground as they said they would within six months of the date of this instrument?

Mr. BAYLESS.—Object to that as incompetent.

Mr. ROBERTSON.—It calls for the full deed as soon as they do.

Mr. BAYLESS.—You want him to construe it.

The COURT.—It is not proper cross-examination.

Q. (By Mr. ROBERTSON.) Did you pay the balance, fifteen hundred dollars?

Mr. BAYLESS.—Object to that.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) What has been done under that contract, Mr. Messerschmidt?

Mr. BAYLESS.—Object to that as not competent.

Mr. ROBERTSON.—I call your attention to the fact that the date of the certificate was on the date this action was started.

The COURT.—Objection sustained. [524—484]

Q. (By Mr. ROBERTSON.) Was that the day—I will withdraw that—did you have any nego-

(Testimony of Gustav Messerschmidt.)

tiations with the Pacific Coast people before the 15th day of August, 1913, regarding buying that lot?

A. I had.

Mr. ROBERTSON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Your negotiations were closed before this suit was brought? A. Oh, yes.

Q. (By the COURT.) They say in here, Mr. Messerschmidt, that a deed is issued contemporaneously with this contract; where is that deed—was that ever executed?

A. It is a contract for a deed.

Q. I call your attention—it says: “which said deed is issued contemporaneously with this contract”; where is that other deed?

A. I couldn't tell you.

Q. Did you get any paper that connected—did you get any paper from the Pacific Coast Company on the 26th or 13th day of August last year besides this contract? A. No.

Q. You didn't get any deed? A. No.

(Witness excused.) [525—485]

**[Testimony of Charles E. Davidson, for Plaintiff
(in Rebuttal)].**

CHARLES E. DAVIDSON, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Please state your name.

(Testimony of Charles E. Davidson.)

A. Charles E. Davidson.

Q. And your residence? A. Juneau.

Q. And your occupation?

A. Surveyor-general for Alaska.

Q. Mr. Davidson, when did you first come to Juneau? A. 1896.

Q. Well, have you resided here continuously since 1896? A. No.

Q. Well, will you account for your time since 1896 to date?

A. As near as I can. I lived here until 1908 most of the time—this was my headquarters till 1908—and then I went to Fairbanks and lived in Fairbanks until last fall.

Q. Did you have anything to do with the Wrangell sawmill in 1905? A. Yes.

Q. What was it?

A. I was receiver for the Wrangell sawmill.

Q. Receiver for the Willson-Sylvester estate?

A. Receiver for the Willson-Sylvester estate, yes, sir.

Q. In 1905 did you have any negotiations with the Pacific Coast Company with reference to a piece of property here in Juneau? A. Yes.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, and if the negotiations were in a contract, the contract is the best evidence. [526—486]

Mr. BAYLESS.—If you will give me an opportunity, I will do more than ask the ordinary questions.

(Testimony of Charles E. Davidson.)

The COURT.—I cannot see how it is rebuttal. What does it rebut?

Mr. BAYLESS.—I am going to ask him whether this was merged in a written contract.

The COURT.—What does that rebut?

Mr. BAYLESS.—That is preliminary as to whether or not he used some land under that contract.

The COURT.—What does that rebut?

Mr. BAYLESS.—That will rebut Mr. James' assertion that he has been occupying this ground in controversy.

The COURT.—Mr. James admits that Davidson built a platform and used it.

Mr. BAYLESS.—During all that period?

The COURT.—During what period?

Mr. BAYLESS.—During the period the platform remained there.

The COURT.—Yes, that was admitted by Mr. James on the witness-stand.

Q. (By Mr. BAYLESS.) I would like to ask Mr. Davidson if he had exclusive possession of that platform erected by him.

Mr. GUNNISON.—We object to that as being irrelevant, incompetent and immaterial, calls for a conclusion and is not rebuttal.

The COURT.—Exclusive possession of the platform?

Mr. BAYLESS.—What his possession consisted of. I will not ask him if he had exclusive possession of it, but I will frame it so it will mean that.

(Testimony of Charles E. Davidson.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Davidson, pursuant to this contract between yourself and the Pacific Coast Company, did you build a platform [527—487] upon the ground in dispute in this case?

Mr. GUNNISON.—We object to that as being irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Davidson, do you know the ground in dispute in this case?

A. I think I do.

Q. Do you know where Mr. James' gridiron is now? A. Yes, I think I know where it is.

Q. Would you say that was in the same place or a different place than the platform which you erected?

A. Well, it is in the neighborhood of the same place I should say, as near as I remember.

Q. Is there any difference between the two structures, the one erected by you and the one erected by Mr. James?

A. You mean the two structures—I don't think they were the same structures. They are different structures.

Q. Do you know how long the structure erected by you remained on the ground?

A. No, I don't. It remained there for some time though.

Q. How long did you use that platform?

A. Well, we used it till the fall of 1905, along in

(Testimony of Charles E. Davidson.)

the fall. I don't know just what time.

Q. Did you use it at any time after the fall of 1905?

A. No, I don't think so. That is, as far as Willson-Sylvester were concerned.

Q. Did Mr. James give you permission to use this platform which was put up there?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—What does this rebut? Did Mr. James testify that he did? [528—488]

Mr. BAYLESS.—Not that I know of.

The COURT.—What does it rebut?

Mr. BAYLESS.—It is a circumstance showing possession by Mr. Davidson adverse to Mr. James.

The COURT.—That may be true, but there is no testimony to the contrary. There is nothing to rebut on that proposition. There is no testimony and Mr. James didn't testify in any sense of the word that he gave Mr. Davidson permission to occupy it.

Mr. BAYLESS.—If this point is conceded, that Mr. Davidson's possession of the property in dispute during the summer of 1905 was adverse to Mr. James, I have no question to ask Mr. Davidson on that point. If your Honor understands that that is a fact.

Mr. GUNNISON.—We certainly don't concede that Mr. Davidson's possession was adverse to Mr. James.

The COURT.—Very well, I overrule the objection.

(Testimony of Charles E. Davidson.)

Mr. GUNNISON.—We still insist it isn't rebuttal.

The COURT.—I know, but your testimony is that his was exclusive.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Davidson, did you get permission from Mr. James to erect this platform?

Mr. GUNNISON.—We renew that objection on the further ground that the evidence of the plaintiff is—and of this witness—the evidence of the plaintiff is that he went there pursuant to a lease from the Pacific Coast Company.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No.

Q. (By Mr. BAYLESS.) You didn't get any permission from Mr. James? A. No.

Q. Did Mr. James interfere with your occupancy or use of that ground in any way?

A. No. [529—489]

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Mr. James himself testified that he never interfered with him. I don't know why you are putting Mr. Davidson on to corroborate Mr. James. If there had been any testimony by the defense that they did interfere, I could see why you would put Mr. Davidson on the stand to say that they didn't.

Q. (By Mr. BAYLESS.) Was there any structure on that beach prior to the time you built the

(Testimony of Charles E. Davidson.)

gridiron or platform?

A. Where this gridiron was?

Q. Yes.

A. No, there was nothing there when I built this gridiron.

The COURT.—Q. When you built the platform—you didn't build the gridiron?

A. Well, no, it was the platform. It wasn't a gridiron.

Q. (By Mr. BAYLESS.) Was there a small gridiron in the vicinity of this platform?

A. I think there was, as I remember it; there was a gridiron there near that some place.

Q. Do you know who used that gridiron?

A. Well, my recollection is that he had on one side or the other; I am not quite clear which side.

Q. Do you know how close to the platform that little gridiron stood?

A. I couldn't say, but it wasn't very far from there as I remember it. This thing has kind of gone out of my mind, since 1905, but I know there was a little gridiron.

Q. Did you ever have occasion to use this little gridiron in landing any lumber from Wrangell?

A. No, I don't think so; I don't remember of it.

Q. Mr. Davidson, how much of the beach did you use or occupy during the summer of 1905?

A. I don't remember the length of that platform; it was probably [530—490] sixty or seventy feet, something like that—maybe a little longer, maybe not quite that long.

(Testimony of Charles E. Davidson.)

Q. Parallel with the beach? A. Yes.

Q. And about how wide?

A. Probably pretty nearly square.

Q. How close to the water was it, or was it in the water?

A. Well, the piling was out in the water when the tide was up; the whole thing was below the high tide.

Q. The whole platform was below high tide?

A. I mean where it was built, the water went above it.

Mr. GUNNISON.—Q. You mean surrounded it?

A. Yes.

Q. (By Mr. BAYLESS.) Do you know anything about that property prior to 1905?

A. Nothing particularly, only I have been up and down there and have seen it, but I don't know anything about who owns it any more than I supposed the Pacific Coast Company claimed it.

Mr. GUNNISON.—Move to strike that.

The COURT.—Motion granted.

Q. (By Mr. BAYLESS.) Do you know who claimed that property in 1905?

Mr. GUNNISON.—Same objection—irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Did you know in 1905 of any claim by Mr. James of any interest in that property adverse to the Pacific Coast Company?

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial, and not rebuttal.

Q. (By Mr. BAYLESS.) You were the lessee of

(Testimony of Charles E. Davidson.)
the Pacific Coast Company?

A. Yes. [531—491]

Q. Did you know any claim of Mr. James that was adverse to the Pacific Coast Company?

Mr. GUNNISON.—Same objection—and not binding on the defendant.

The COURT.—Objection overruled.

A. No, I didn't know of any.

Q. (By Mr. BAYLESS.) Did Mr. James do anything to indicate that he had any adverse claim to the Pacific Coast Company in 1905 while you were occupying the ground?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, and as calling for a conclusion of the witness.

The COURT.—The question is not rebuttal.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Are you certain about the dimensions of that platform, Mr. Davidson? A. No.

Q. And you are giving it to the best of your recollection? A. To the best of my recollection.

Q. How long did you say you used that?

A. Well, I used it until the lumber was removed in the fall—lumber piled on there—and from time to time we brought scows of lumber and unloaded it.

Q. Do you remember how many scows of lumber you brought up?

A. Probably six or seven scow loads.

(Testimony of Charles E. Davidson.)

Q. Did you testify that you saw a small gridiron there? A. Yes. [532—492]

Q. Did you ever see Mr. James use that?

A. Yes, I think Mr. James used to land a scow there, if I remember.

Mr. GUNNISON.—That is all.

(Witness excused.) [533—493]

[Testimony of S. H. Ewing, for Plaintiff (Recalled in Rebuttal).]

S. H. EWING, a witness sworn and recalled by the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. You have been sworn before, Mr. Ewing?

A. I have.

Q. Mr. Ewing, how long have you been agent of the company here? A. Since January, 1911.

Q. Do you know who has been using the piece of property in dispute in this case since you have been here? A. I do.

Q. Who has?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, not rebuttal, too general in character, and not confined to the time prior to the commencement of this action.

The COURT.—That was part of your case in chief, Mr. Bayless, it seems to me.

Mr. BAYLESS.—It is only preliminary.

Q. Has Mr. James been using this gridiron since

(Testimony of S. H. Ewing.)

you have been here up to the time this suit was begun?

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, not rebuttal, already testified to by this witness in the case in chief.

The COURT.—This is a direct question to a witness to negative the testimony of Mr. James. Mr. James testified that he has been using it ever since. Here is a witness which he asks whether Mr. James has used it in the last year or so.

Mr. ROBERTSON.—We object to it because it is leading.

The COURT.—Very well, but that wasn't the objection Judge Gunnison made. It is leading—change the form. [534—494]

Q. (By Mr. BAYLESS.) Who has been occupying this ground since you have been up here up to the time the suit was begun?

A. The gridiron belonged to Mr. James.

Q. And Mr. James has been using the gridiron up to that time? A. As well as other people.

Mr. GUNNISON.—Q. This same gridiron?

A. This same gridiron.

Q. (By Mr. BAYLESS.) Do you know of anybody else using it besides Mr. James? A. I do.

Q. Who?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

A. Peter Madsen for one with his gravel scows, or the Alaska-Juneau people for the material of the

(Testimony of S. H. Ewing.)

administration building, and at times some boats put on there for painting and so on.

Q. (By Mr. BAYLESS.) Mr. Ewing, when did you first become aware of the adverse claim of Mr. James to this property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not rebuttal, and already testified to by this witness in his case in chief.

The COURT.—I think so, Mr. Bayless.

Mr. BAYLESS.—I don't remember, if the Court please, of having asked him that question before.

Mr. GUNNISON.—It is my recollection that he did.

The COURT.—That is my recollection, but you may ask it.

Q. (By Mr. BAYLESS.) When did you first become aware of Mr. James' adverse claim?

A. Last year when he started to drive piles on the westerly end of it—the fact that it was claimed by him.

Q. You had never heard of his making a claim like that prior to that time? [535—495] A. No, sir.

Mr. GUNNISON.—We object to that as leading.

Mr. BAYLESS.—It is just a repetition, to save time.

The COURT.—He has already answered the question.

Q. (By Mr. BAYLESS.) You say Mr. James was using this gridiron when you first came here?

A. By scows of lumber from his sawmill across at Douglas.

(Testimony of S. H. Ewing.)

Q. Did you know at that time that he was making any adverse claim to the ground? A. I did not.

Mr. GUNNISON.—We object to that as being a repetition and leading.

The COURT.—Yes, that is a repetition and leading both.

Q. (By Mr. BAYLESS.) Why didn't you take some step to put him off?

Mr. GUNNISON.—Object to that on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence. It is the same question that was asked Mr. Dautrick and excluded.

The COURT.—And I let Mr. Dautrick answer it—the question as to why. You cannot go into any business relations between you and Mr. James, but anything in the character of occupation by Mr. James—

A. Upon instructions of my predecessor.

Mr. GUNNISON.—We move to strike it.

The COURT.—It will be stricken.

Q. (By Mr. BAYLESS.) Mr. Ewing, if Mr. James should drive the piles and make the improvements contemplated by him, what, if any, effect would it have upon the property of the company?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, as calling for a conclusion of the witness, and was part of their case in chief and is not rebuttal.

The COURT.—I don't know about that, Judge Gunnison. [536—496]

Mr. GUNNISON.—Already gone into it, your Honor.

(Testimony of S. H. Ewing.)

The COURT.—Yes, but you must recollect that you have a case the same as the plaintiff.

Mr. GUNNISON.—That is true, your Honor.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) What, if any, effect would these improvements have upon the company's property?

A. You mean piling the tract in dispute by Mr. James?

Q. Yes.

A. Well, liable to disrupt their plans for their proposed new dock they are going to build.

Q. Well, I hand you a map and ask you to tell the Court just what Mr. James' activities would result in with reference to the plans of the company and the proposed improvements of the company.

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, not the best evidence of the proposed plans of the company, are not binding upon Mr. James, and not a defense in the action, and further that there is no testimony that he—well, I will withdraw that—

The COURT.—You withdraw your objection?

Mr. GUNNISON.—There is no testimony that he is going to pile. The testimony is that he is going to build a gridiron. Further, we object to the use of the map unless it is properly identified and put in evidence.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Ewing, go ahead and answer that.

(Testimony of S. H. Ewing.)

A. It will do away with part of the proposed coal bunkers, cold-storage house and the easterly approach from Franklin Street onto the wharf.

Mr. GUNNISON.—We move to strike all that as not responsive to the question—irrelevant, incompetent, immaterial, and not [537—497] rebuttal.

The COURT.—Objection overruled and the motion will be denied.

Mr. GUNNISON.—And the further objection that the right to build out a wharf—the only right of the ownership to the upland or wharf site is of access to deep water; and that there is no evidence here that the acts of the defendant James would interfere with the access to this company to deep water over their claim or proposed wharf. On the contrary, the evidence is that they could use it with at least one vessel. They could have access to deep water for at least one vessel.

The COURT.—I don't understand that the claim of the plaintiff is based entirely on the claim of access. They also claim rights by virtue of occupation. Proceed.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Ewing, I will ask you what this map is—to identify it.

Mr. GUNNISON.—We desire to interpose the further objection to that, your Honor, that all the witness has testified to is that these were contemplated plans—purely speculation—that there is nothing definite about it, no work has been commenced upon it, and there is no evidence that they ever will

(Testimony of S. H. Ewing.)

go through with it; and, further than that, that the evidence is that a large tract of this—a portion of this ground has been sold and is under contract.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Go ahead and tell what the map is.

A. This is a plan of the proposed new wharf on the old Carroll-Murray wharf site—includes a warehouse, cold storage, coal-house and approaches on either end from Franklin Street. [538—498]

Q. Does that map properly delineate the proposed improvements?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial. The witness hasn't qualified himself as being competent to testify on that subject.

The COURT.—Objection overruled.

A. It does.

Mr. BAYLESS.—We offer this in evidence as an illustration of the witness' testimony.

Mr. GUNNISON.—We object to the offer of the map on the ground that it hasn't been properly identified; that there is no testimony as to the accuracy of it, when it was prepared, or by whom, and that it is irrelevant, incompetent, and immaterial; and that there are already other maps in evidence that cover the same ground.

Mr. BAYLESS.—Show them to me, Judge.

The COURT.—Objection overruled.

(Admitted in evidence and marked "Plaintiff's Ex. No. 25.")

(Testimony of S. H. Ewing.)

Q. (By Mr. BAYLESS.) Mr. Ewing, is any portion of this new wharf built?

Mr. GUNNISON.—That is objected to unless it is on some portion of the ground in question. It might be built elsewhere and be immaterial.

The COURT.—Objection overruled.

A. The westerly approach is piled over and there are two rows of piles the length of the wharf site up to the row of piles that Mr. James drove last fall.

Q. (By Mr. BAYLESS.) Clear down to James'?

A. Yes; two rows of piles right down to where Mr. James drove piles last fall, and was enjoined—

Q. When is the rest going to be done?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, and calls for a conclusion of the witness. [539—499]

The COURT.—Judge Gunnison, are you not asking for an injunction against these people to prevent them from piling over in front of you?

Mr. GUNNISON.—Yes, sir.

The COURT.—How is it going to hurt you if he proves that that is what they intend to do?

Mr. GUNNISON.—Well, I don't know as it will.

The COURT.—Very well—objection overruled.

A. As soon as the injunction is dissolved, that is, if the injunction is dissolved in our favor. That is the only reason the wharf hasn't been proceeded with.

Q. To the best of your knowledge? A. Yes.

Mr. BAYLESS.—We offer that in evidence.

(Testimony of S. H. Ewing.)

Mr. GUNNISON.—We object to the introduction of the map.

The COURT.—The map has been admitted ten minutes ago.

Cross-examination.

(By Mr. GUNNISON.)

Q. This additional work is to be done, Mr. Ewing, whenever the injunction against the company is raised? A. Yes, sir.

Q. That is, you mean work on this particular piece of ground in controversy?

A. The balance of the work and the easterly approach to the proposed wharf.

Q. On what do you base your information—your statement?

A. From instructions from my superior.

Q. From your superior officer?

A. Yes. [540—500]

Q. When was it you first heard of Mr. James' adverse claim?

A. It was the morning that he started in to drive piles.

Q. You never heard of his claiming it before that?

A. No, sir.

Q. You never talked to him about it before that?

A. Not to my knowledge.

Q. Didn't you go down there two or three months before that and order him off?

A. No; I went down there when Webster was driving some piles there by the gridiron and asked him what he was doing.

(Testimony of S. H. Ewing.)

Q. When was the Alaska-Juneau occupying this ground?

A. That was right—last winter, the latter part of last year.

Q. That was after this action was commenced?

A. Yes, sir, to the best of my knowledge.

Q. When was it Madsen occupied it?

A. Madsen—I seen him off and on for the last two years.

Q. Was that under permission from the Pacific Coast Company that Madsen was there?

A. No, sir.

Q. Do you know whether or not Madsen is there on a lease from Mr. James? A. I could not say.

Q. You knew the gridiron belonged to Mr. James?

A. So I was informed.

Q. How long have you known that?

A. Pretty near from the first day I took charge of this agency.

Q. And you know Mr. James has been using the ground all that time?

A. I have seen scows from the mill over in Douglas on there time and again.

Q. And the first time you ever heard of his adverse claim was about the time this action commenced?

A. That he claimed that ground, yes, sir. [541—501]

Q. Your knowledge of these proposed improvements is all received from your superior officer in the company? A. Yes, sir.

Mr. GUNNISON.—That is all.

(Testimony of S. H. Ewing.)

Q. (By the COURT.) Mr. Ewing, I call your attention to Plaintiff's Exhibit 25, to lots numbered fourteen and fifteen, and what is marked on here as a gridiron—I understand that your company, the plaintiff in the case, proposes and intends and will, unless restrained, build a wharf entirely closing in and shutting off lots 13 and 14 from deep water?

A. Thirteen, fourteen, and part of fifteen, yes, sir.

Q. That is the intention of the company—that is what they will do unless they are restrained?

A. Yes, sir.

The COURT.—Very well; that is all.

(Witness excused.)

(Whereupon Court adjourned until 9:30 A. M., July 22, 1914, when Court reconvened pursuant to adjournment.) [542—502]

[Testimony of P. L. Gemmett, for Plaintiff (in Rebuttal).]

P. L. GEMMETT, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and residence.

A. P. L. Gemmett, Juneau.

Q. Mr. Gemmett, have you an arrangement to purchase some lots of the Pacific Coast Addition from the Pacific Coast Company?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, and is not the best evidence.

The COURT.—What is that rebuttal of?

(Testimony of P. L. Gemmett.)

Mr. BAYLESS.—Why, Judge Gunnison attempted to show that we had dispossessed ourselves of all of our uplands.

Mr. GUNNISON.—We showed from one witness that the Pacific Coast Company had disposed of the uplands either by deed or by agreement.

A. I have a deed—contract for a deed.

The COURT.—Does this deed purport to show any disposal of the upland abutting on this property?

Mr. BAYLESS.—Yes, sir, we propose to show that Mr. Gemmett has a contract for part of the upland, but that we have not parted with the title as yet.

The COURT.—I think you ought to be allowed to show that.

A. Yes, sir.

Q. (By Mr. BAYLESS.) Has that arrangement been reduced to writing? A. Yes, sir.

Q. Have you the contracts with you?

A. Yes, sir. [543—503]

Q. Will you let me see them?

A. (Witness hands paper to counsel.)

Q. What is this first contract?

A. Contract for a deed.

Q. For what lot? A. Lot one, block three.

Q. Of the Pacific Coast Addition?

A. Of the Pacific Coast Addition, yes, sir.

Mr. GUNNISON.—We submit that that isn't a lot in controversy here—lot one in block three.

A. Yes, sir.

Mr. GUNNISON.—We submit that it is not in controversy. The only upland lots in controversy are two, three, and four, in block three.

(Testimony of P. L. Gemmett.)

Mr. BAYLESS.—I believe that is true, if the Court please. I will withdraw that and I have no objection to the objection being sustained.

Q. I will hand you this other contract and ask you what that is? A. Contract for a deed.

Q. For what lots? A. Lot two in block three.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—Objection overruled.

Mr. GUNNISON.—Well, I will withdraw that.

Mr. BAYLESS.—We offer this agreement in evidence.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—That is one of the upland lots—objection overruled.

Mr. BAYLESS.—Only a portion—the eastern portion abutting on it. [544—504]

Q. You have another contract, Mr. Gemmett?

A. Yes, sir.

Q. Between yourself and the Pacific Coast Company? A. Yes, sir.

Q. For what lots?

A. Lots three and four in block three.

Mr. BAYLESS.—We offer that contract for a deed in evidence.

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

Mr. BAYLESS.—I would like to have the privi-

(Testimony of P. L. Gemmett.)

lege of reading those agreements in evidence. They are originals and belong to Mr. Gemmett.

Mr. GUNNISON.—We have no objection to substituting copies, if they are admitted in evidence.

Mr. BAYLESS.—Q. Mr. Gemmett, will you leave them for a little while? A. Yes.

The COURT.—Let the clerk mark them so as to identify them.

(Admitted in evidence and marked “Plaintiff’s Exhibits No. 26 and No. 27.”)

Q. (By Mr. BAYLESS.) These are the only paper writings between you and the Pacific Coast Company, are they?

A. With the exception of Howard Ewing and myself.

Q. An agreement with Howard Ewing—that is not between you and the Pacific Coast Company?

A. Individually—no.

Q. You have no deeds for these lots from the Pacific Coast Company? A. No.

Cross-examination.

(By Mr. GUNNISON.)

Q. What is the agreement between you and Mr. Ewing with reference [545—505] to these lots—have you sold your interest in them?

Mr. BAYLESS.—Object to that as incompetent and immaterial.

The COURT.—Q. Does it relate to these lots?

A. No; another lot we own is all.

Q. (By Mr. GUNNISON.) It doesn’t relate to lots two, three and four in block three?

(Testimony of P. L. Gemmett.)

A. No.

Q. Were those agreements executed on the day they bear date?

A. On the day they bear date, yes.

Q. Or on the day when they were acknowledged?

A. On the day they bear date.

Q. Well, if they were acknowledged on the fourteenth of August and the instrument bears the date of the 11th of May, 1913, which day were they executed and delivered to you?

Mr. BAYLESS.—Object to that as argumentative.

The COURT.—Objection overruled. Of course, the day they were executed is the day they were acknowledged, but the day they were delivered—if you mean the—

Mr. GUNNISON.—I mean delivery was part of the execution of the contract. The contract might have been executed and not delivered and until it was delivered it wouldn't be a binding contract.

The COURT.—Yes, but if a deed is made and executed and it is delivered when it takes effect as a deed—it takes effect as a deed when it is acknowledged.

Q. (By Mr. GUNNISON.) Have you paid anything on these contracts? A. Yes.

Q. On the contract for Lot 2 in Block 3, Pacific Coast Addition,—it calls for a payment of \$750 prior to the execution of the contract; have you paid that?

A. Yes, sir.

Q. Have you paid anything more on it?

A. No. [546—506]

Q. In the agreement for Lots three and four, Block

(Testimony of P. L. Gemmett.)

three, it calls for a payment of \$1500 prior to the execution of the contract; have you paid that?

A. Yes, sir.

Q. Have you paid anything more on that agreement? A. No, sir.

Q. Are you in possession of the land now?

A. Yes, sir.

Q. Have you a structure on it? A. One.

Q. Which one?

A. It is Lot three, I think. Isn't that the one next to the bakery?

Q. That is directly behind the James gridiron?

A. Yes, sir.

Q. You know where Mr. James' gridiron is?

A. Yes, sir.

Q. And it is directly behind the James gridiron?

A. Yes, sir.

Mr. GUNNISON.—That is all.

(Witness excused.)

Mr. BAYLESS.—That is all for us, your Honor.

Mr. GUNNISON.—Your Honor said we were to have the points of the compass put on this exhibit "A" and we have asked Mr. Wilhelm to come up and be sworn in order to do it. [547—507]

[Testimony of Victor H. Wilhelm, for Defendant.]

VICTOR H. WILHELM, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name and occupation?

(Testimony of Victor H. Wilhelm.)

A. Victor Wilhelm, surveyor.

Q. Where do you live? A. Juneau, Alaska.

Q. I hand you a plat marked Defendant's Exhibit "A" and ask you if you know what that is?

A. I do.

Q. What is it—or what was it originally before those pencil marks were put on it?

A. It is a plat of the survey of the James gridiron and vicinity thereof.

Q. Are you able to say from an examination of that plat whether the representation of the gridiron, the street, the approaches, and the lot lines marked above are accurate?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

A. That shows the true meridian. (Indicating.)

Q. The mark marked T. M.? A. Yes.

Q. And the point where the arrow is is the north?

A. Yes.

Q. Does that indicate the true north?

A. It does.

Q. Did you say you were able to say whether that was an accurate representation—whether that map was drawn to scale? [548—508]

A. Yes, sir; I examined the pencil original of it which was in the office before I came up.

Q. Do you know by whom that was prepared?

A. I do.

Q. By whom? A. By Mr. Hill—Lloyd G. Hill.

Q. Was he connected with your office at that time?

A. He was.

(Testimony of Victor H. Wilhelm.)

Q. And are the original notes and pencil drawings of that survey in your office? A. They are.

Q. I would ask you to state whether or not that map is drawn to scale and if, in order to testify to that, you find it necessary to refer to something—notes or maps which you have—I ask you to do so.

A. I have the original pencil drawing of this—this map was a tracing of the pencil drawing, tracing of the original which I have examined. You can see they fit right on each other.

Q. After having examined that, are you able to say whether or not that tracing is drawn to scale on Defendant's Exhibit "A"? A. Yes, I can.

Q. Well, does it—is it drawn to scale?

A. This plat is drawn to scale and is an accurate delineation of the property.

Q. Is the scale twenty feet equal to one inch correct? A. It is.

Q. Now, you referred, when you say the map is drawn to scale, to those portions of the map in ink—not the pencil marks? A. Just the ink marks.

Q. Will you mark on that north, south, east, and west?

A. Yes, sir, I will. (Witness marks drawing.)
[549—509]

Cross-examination.

(By Mr. BAYLESS.)

Q. Did you make this map yourself?

A. I did not.

Q. Did you assist Mr. Hill in surveying this property? A. No.

(Testimony of Victor H. Wilhelm.)

Q. Did you have anything to do yourself with making this survey? A. I did not.

Q. How can you be sure then that this map is an accurate representation of the property as it exists on the ground?

A. I made the statement and I can say—I said it was drawn to scale; I have scaled it and I have made surveys around here. (Indicating.)

Q. Isn't it a fact that all you know about it is that the map appears to be drawn to scale, or are you prepared to testify that this map correctly delineates the property on the ground?

A. I can say that from my knowledge of the ground it would delineate the property as it is.

Q. Have you ever had occasion to survey this gridiron? A. No, I have not.

Q. You have never surveyed the gridiron itself?

A. No.

Q. Or that in relation to the other property there?

A. Yes, I can say that, because I have located the gridiron on that. I have located it—I have not actually run out the gridiron itself.

Q. You have never, in other words, surveyed the gridiron? A. No.

Q. Nor the approaches? A. No.

Q. Then you cannot testify that this is an accurate representation of the ground, can you? [550—510]

A. I said from my knowledge of the ground, as far as knowledge of the ground is concerned.

Q. I don't quite understand you.

(Testimony of Victor H. Wilhelm.)

A. I will say that I know that map is drawn to scale.

Q. But you are not prepared to say that this map correctly delineates the property on the ground?

A. No, I am not prepared to say that.

Q. Mr. Hill is not here? A. No.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. Hill is ill?

A. No, he is in Canada, back east.

Q. How long has he been gone?

A. Five months.

Q. He has not been here at any time during this trial, during the last week or ten days? A. No.

Q. (By the COURT.) Are you able to testify that what you put on that map as north, south, east, and west, is correct? A. I am.

The COURT.—Very well. The map has been introduced in evidence long ago. The only thing I wanted was to put north, south, east, and west on it.

(Witness excused.) [551—511]

[Testimony of George E. James, for Defendant (in Sur-rebuttal).]

GEORGE E. JAMES, a witness called and sworn in behalf of the defendant, testified in sur-rebuttal as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Do you know a man by the name of Peter Madsen, or Captain Peter Madsen? A. Yes, sir.

(Testimony of George E. James.)

Q. Is he occupying or using a piece of this beach at this time? A. Yes, sir.

Mr. BAYLESS.—Object to that as not proper sur-rebuttal.

Q. (By Mr. GUNNISON.) Was he using this beach at the time this action was commenced and had he been sometime prior thereto? A. He had.

Q. Under whose authority? A. Mine.

Q. Had you any written instrument with him with reference to it?

A. Yes, sir, he had a written agreement to use it for so much a month.

Q. I hand you a paper marked “Exhibit ‘B,’ number of the case 1024–A,” and ask you what that is?

A. That is the agreement between Peter Madsen and myself for the use of that gridiron.

Q. Did he pay you rent therefor? A. Yes, sir.

Q. For what period of time?

A. Since that was made up to the present time.

Mr. GUNNISON.—We offer it in evidence.

Q. Who drew it?

A. My bookkeeper, Mr. Simpson. [552—512]

Mr. BAYLESS.—We object to it as incompetent, irrelevant, immaterial, and not proper sur-rebuttal.

The COURT.—Q. When was this suit begun?

Mr. GUNNISON.—Fifteenth of August, 1913.

The COURT.—Objection overruled.

(Admitted in evidence and marked Defendant’s Ex. “D.”)

Q. (By Mr. GUNNISON.) Has the Alaska-Juneau Mining Company occupied, or did the

(Testimony of George E. James.)

Alaska-Juneau Mining Company occupy any portion of this ground prior to the time of the commencement of this action? A. Yes, sir.

Q. Under whose permission? A. Mine.

Mr. GUNNISON.—I desire to ask Mr. James one or two questions—I may have asked him this in our case in chief, but it occurs to me that it is in rebuttal of some of the testimony of Mr. Swan with reference to the delivery of lumber at the James gridiron to the Alaska-Perseverance Mining Company during the years 1905, 1906, 1907, and prior to 1908. A part of Mr. Mitchell's deposition also goes to the same subject, and, while we offer that in our case in chief, we also think it is competent in rebuttal on that same subject, and I now ask these questions with that purpose in view.

The COURT.—Just a moment. Have you been over the matter once?

Mr. GUNNISON.—Well, not fully and clearly. We have shown when Mr. James commenced delivering lumber to the Perseverance Company, but haven't shown who delivered lumber in the interim.

The COURT.—Very well, you may ask him.

Q. (By Mr. GUNNISON.) Mr. James, do you know who was selling the lumber to the Perseverance Company in the year 1905, or the Joshua-Hendy Company, who were building for the Perseverance? [553—513] A. The Wrangell people.

Q. Willson-Sylvester Estate?

A. Willson-Sylvester Estate, yes, sir.

Q. Who furnished lumber in the year 1906?

(Testimony of George E. James.)

A. J. P. Jorgenson sawmill.

Q. Was any of that lumber delivered over this piece of ground in controversy?

A. Not to my knowledge, no, sir.

Q. Did you delivery any lumber to the Perseverance Company in 1906? A. No, sir.

Q. From whom was the lumber purchased by the Perseverance Company in 1907?

A. J. P. Jorgenson.

Q. Was any of that delivered over this piece of ground? A. Not that I know anything of.

Q. Did you deliver or sell any lumber to the Perseverance Company or deliver it over this ground in 1906? A. I did not.

Q. Well, what were the facts with reference to these matters in 1907?

A. I did not deliver any lumber to them.

Q. Who did deliver lumber to them in 1907?

A. J. P. Jorgenson.

Q. When did you commence delivering lumber to the Perseverance Company, sell lumber to the Perseverance? A. July 20, 1908.

Q. Prior to that time did you deliver any lumber to the Perseverance Company over this ground?

A. It shows one item of three dollars of lumber to the Perseverance during June of that year.

Q. Who sold them lumber prior to that time?

A. J. P. Jorgenson.

Q. Was any of that lumber delivered over your ground? [554—514] A. No, sir.

Q. And after July 20, 1908, you had a contract

(Testimony of George E. James.)

with the Perseverance Company to deliver lumber?

A. Yes, sir.

Q. And that was delivered where?

A. Over the gridiron.

Q. Was any delivered over that gridiron pursuant to any permission from anybody? A. No, sir.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. James, when did you say you sold the Perseverance Company that three dollars worth of lumber. A. I think that was in June.

Q. Of what year?

A. June, 1908; might have been the first part of July, but very close to the time I entered into a contract with them.

Q. How was that lumber obtained from the Jorgenson sawmill—how was it delivered from the Jorgenson sawmill to the Perseverance mine?

A. By wagon.

Q. Where did those wagons go with reference to your property? A. Over the plank road.

Q. Which was in *in* 1908? A. In 1908, yes.

Mr. BAYLESS.—I think that is all.

(Witness excused.) [555—515]

Mr. GUNNISON.—We desire to dictate in the record a motion for judgment on the pleadings.

The COURT.—Well, just a moment—let us see if all the evidence is closed.

Mr. GUNNISON.—We rest.

Mr. BAYLESS.—We rest.

(Testimony of George E. James.)

The COURT.—All right, proceed.

Mr. GUNNISON.—Comes now the defendant, George E. James, and moves the Court for judgment on the pleadings, on the ground that the plaintiff, in its pleadings, has admitted that they have sold, transferred, and dedicated to the City of Juneau a portion of the westerly—as public streets and alleys, a portion off from the westerly ends of lot two in Block S, and one and two in Block T, of the old survey, which corresponds generally to Lots two, three, and four, in Block three of the present survey of the Pacific Coast Addition, and that, by that admission, it appears that the plaintiff has deprived itself of any littoral or riparian rights which it may have had pursuant to an ownership of the upland, and they have further admitted in their pleadings that the defendant, George E. James, is in possession of the ground in controversy, and the pleadings also show that they have divested themselves thereby under the Act of 1884.

The COURT.—The motion will be denied. [556—516]

I hereby certify that the foregoing pages, numbered one to five hundred and sixteen, contain a full and true transcript of notes taken by me on the trial of the above cause from July 17 to July 22, 1914, and is, as I verily believe, a correct transcript of proceedings had on said dates.

H. F. BENSON,
Court Stenographer.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Mar. 6, 1915. J. W. Bell, Clerk. By —————, Deputy. [557]

[Plaintiff's Exhibit No. 1—Notice.]

Notice is hereby given that the undersigned W. W. Murry hereby claims for building, and wharf purposes the following described plot of land lying about one-eighth of a mile Easterly from the Town of Harrisburg on the Sea Shore the center line is marked by a blazed tree and notice and large boulder near low-water mark in line S. 25° W Magnetic the courses and distances are as follows: commencing at Stake and mound of stone 1st N. 25° E. (600) Six hundred feet, thence 2nd S. 65° E. (600) Six hundred feet, thence 3rd S. 25° W. 600 Six hundred feet to stake and mound of stone at low water mark, and thence 4th N. 65°, W. 600 feet along the water line to place of beginning.

Located March 6th, 1881.

W. W. MURRY.

Witnesses:

F. LAGLIABUE.

N. G. HILTON.

Harris Mining District, Takou, Alaska Territory,
March 12th, 1881.

R. DIXON,
Recorder.

March 12th, 1881.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and

correct copy of a Notice of Location as found in the records of the Juneau Recording District, Book A or 1, of Lode Claims et., at page 144, and of the whole thereof.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 1. Received in evidence Jul.
17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk.
By J. T. Reed, Deputy. [558]

[Plaintiff's Exhibit No. 2—Minutes of Miners' Meeting of March 21, 1881.]

Rockwell, Alaska, March 21, 1881.

Pursuant to a call signed by W. M. Bennett and 22 others, the miners of Harris District met at the house of Mr. Bennett and by consent adjourned to the house known as "the Flag of all Nations"; after a statement by Mr. Bennett and consultation, Mr. Lewis was elected chairman and Mr. Reynolds, Secretary.

Motion made and seconded and carried to elect a committee of three to examine into the action already had by the citizens, and to lay out city front and other streets. Mr. Franklin, Mr. Cooper and Mr. Mahon were duly elected with instructions to recommend water front line, cross streets, size of lots, etc., and report at an adjourned meeting. After further consultation adjourned to meet and hear report of the committee on Saturday, March 26th, 1881, at 4 o'clock P. M. Adjourned.

(Signed) GEO. W. REYNOLDS,
Secretary.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the minutes of the Miners' meeting as found in the records of the Juneau Recording District, Book A or 1, Lode Claims, etc., at page 71, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 2. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [559]

[Plaintiff's Exhibit No. 3—Minutes of Miners' Meeting of March 26, 1881.]

Rockwell, Alaska, March 26th/81.

Meeting met pursuant to adjournment. Mr. Lewis in the Chair. Minutes previous meeting read and approved.

Committee on city front, etc., elected at last meeting made verbal report and presented town plot which they recommended.

After discussion motion made and seconded that the report and plot be rejected. Lost.

Motion made and seconded that report and plot be accepted and approved. Carried.

After statement by Mr. Reynolds he presented the following preamble and resolution:

Whereas, Captain M. W. Murray has located outside and to the east of the City a wharf site and proposes at earliest opportunity to build a wharf and

warehouse for the accommodation of vessels and steamers and for the benefit of all citizens alike, it is the sense of the meeting that we should encourage such an enterprise; therefore it is hereby "Resolved that the miners and citizens of the District and City, recognizing that such improvements would be a public benefit, hereby accept, endorse and recognize the rights of said Capt. Murray and will by our future acts endorse and recognize his rights to the said wharf site and improvements."

Motion made and seconded that the preamble and resolution as read be *endorse* and approved. Carried unanimously.

After discussion a motion was made and seconded that a committee of three be elected to investigate the matter of the appropriation by the City of the town lot of Peter *Emesord* Corner City Front and Seward Streets for street purposes and estimate that damage down to the corner, also to estimate the benefit to anyone from the vacating the lot on the opposite [560] corner and report to the next adjourned meeting for action of citizens. Carried.

Mr. Cooper, Mr. Franklin and Mr. Stute elected with request that they report and record be presented in meeting.

After discussion a motion was made and seconded that it is the sense of this meeting that no person is entitled to locate more than one town lot and only by *bona fide* residence. Carried.

Motion made and seconded to adjourn until Mon-

day, March 28th, 1881, at 1 o'clock P. M. Adjourned.

(Signed) GEO. W. REYNOLDS,
Secretary.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the minutes of the miners' meeting as found in the records of the Juneau Recording District in Book A or 1 of Lode Claims, etc., at page 72, and the whole thereof.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 3. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [561]

[Plaintiff's Exhibit No. 5—Deed—Murray to Johnson, Dated November 22, 1893.]

DEED—M. W. MURRY to CHAS. S. JOHNSON.
District of Alaska,
Juneau Recording District,—ss.

The within instrument was filed for record at 11 o'clock A. M. November 21st 1883 and duly recorded in Book O, on page 688, of the records of said District.

W. R. HOYT,
District Recorder.

KNOW ALL MEN BY THESE PRESENTS, that I, MARTIN W. MURRY, of the town of Juneau, District of Alaska, in consideration of Five Dollars, to me paid by Charles S. Johnson of the

town of Sitka, District of Alaska, do hereby grant, bargain, sell, remise, release and forever quitclaim unto the said Charles S. Johnson and unto his heirs and assigns, all my right, title and interest in and to the following described parcel of land, situated in the town of Juneau, and District of Alaska, to wit:

An undivided one-half ($\frac{1}{2}$) part or interest of, in and to that certain piece or parcel of land, situated, lying and being in the east end of the town of Juneau, Alaska, and known as the Murray and Carroll Wharf Premises; the same being six hundred (600) feet in length along the sea shore of Gastineaux Channel and more particularly described in the location certificate of said wharf premises recorded in Book "A" of Records, on page 144, of the Records of Harris Mining District, Alaska, to which said records for greater certainty of description of said land and premises, reference is hereby made:

Together with an undivided one-half ($\frac{1}{2}$) part, or interest of, in and to all buildings, wharfs and improvements thereon situated and erected.

TO HAVE AND TO HOLD the same, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto said Charles S. Johnson, and to his heirs and assigns forever.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of November, A. D. 1893.

M. W. MURRY. (Seal) [562]

Signed, sealed and delivered in the presence of

JOHN G. HEID.

ARCHD. CAMPBELL.

United States,
District of Alaska,—ss.

This certifies That on this 21st day of November, A. D. 1893, before me, the undersigned, a Notary Public in and for the said District, personally appeared the within named Martin W. Murry, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the *the* same freely and voluntarily, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial Seal, the day and year last above named.

F. D. KELSEY,

Notary Public for Alaska.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 9 of Deeds, at page 688 to 689 and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN. B. MARSHALL,

District Recorder.

Plffs. Exhibit No. 5. Received in evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [563]

[Plaintiff's Exhibit No. 6 — Deed — Murray to Carroll, Dated October 26, 1893.]

KNOW ALL MEN BY THESE PRESENTS: That I, M. W. Murry, of the City of Oakland, California, formerly of Juneau, Alaska, in consideration of Five Dollars to me paid by James Carroll, of the City of San Francisco, State of California, do hereby grant, bargain, sell, remise, release and forever Quitclaim unto the said James Carroll and unto his heirs and assigns all my right, title and interest in and to the following described parcel of land, situate in the said town of Juneau, and District of Alaska, to wit:

An undivided one-half ($\frac{1}{2}$) part or interest of, in and to that certain piece or parcel of land, situated, lying and being in the East end of said town of Juneau, and known as the "Murry and Carroll Wharf Premises," the same being six hundred (600) feet in length along the sea shore of Gastineau Channel, and more particularly described in the location certificate of said wharf premises, recorded in Book "A" on page 144, of the records of Harris Mining District, Alaska, to which records for greater certainty of description of said wharf premises, reference is hereby made. Together with an undivided one-half ($\frac{1}{2}$) part or interest of, in, and to all buildings, wharfs and improvements thereon situated and erected.

To Have and to Hold the Same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining,

unto the said James Carroll and to his heirs and assigns forever

In Witness Whereof I have hereunto set my hand and seal this 26th day of October, A. D., 1893.

M. W. MURRAY. (L. S.)

Signed, sealed and delivered in presence of:

JOHN G. HEID.

F. D. KELSEY. [564]

United States of America,
District of Alaska,—ss.

This certifies that on this 26th day of October, A. D. 1893, before me, the undersigned, a Notary Public in and for district personally appeared the within named M. W. Murry, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentiond.

In testimony whereof, I have hereunto set my hand and Notarial Seal the day and year last above named.

[Notarial Seal]

F. D. KELSEY,

Notary Public for Alaska.

Filed for record 12:30 P. M., Nov. 14, 1896.

H. W. MELLEN,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording

District as appears in Book 11 of Deeds, at page 665 to 666 and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 6. Received in evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [565]

**[Plaintiff's Exhibit No. 7—Deed—Hughes to Griffin,
Acknowledged February 18, 1884.]**

This indenture made the —— day of ——, in the year of our Lord one thousand eight hundred and eighty-four. Between Edward C. Hughes of North Powder River, Union County, Oregon, party of the first part and M. F. Griffin of Weaverville, Trinity County, State of California, the party of the second part. Witnesseth that the said party of the first part for and in consideration of the sum of Fifteen Hundred Dollars lawful money of the United States of America to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit claimed and by these presents does grant, bargain, sell, remise and release and forever quit-claim unto said party of the second part and to his heirs and assigns all the right, title and interest of the party of the first part in and to certain mining claims or locations situated in Harris Mining District, Alaska Territory, which party of the first part has in joint ownership with James Carroll and M. W. Murry. Also all the right, title and interest of the party of the first part in and to a cer-

tain wharf and wharf site situated at the lower end of the Town of Juneau, Alaska Territory, which wharf site being located and which wharf being built in the year 1881 by said party of the first part jointly with James Carroll and M. W. Murry, together with all the dips, spurs and angles; also all the metals, ores, gold and silver bearing quartz rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining and the rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first [566] part of, in or to the said premises and every part and parcel thereof with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ED. C. HUGHES. (Seal)

By JAS. CARROLL,

His Attorney in Fact.

Signed, Sealed and Delivered in presence of:

M. O. B. VOORHEES.

C. C. BARTLETT.

State of California,
City and County of San Francisco.

On this 18th day of February, in the year one thousand eight hundred and eighty-four, before me, Louis Meinenger, a Notary Public in and for the said city and county, duly commissioned and sworn, personally appeared James Carroll, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of Edward C. Hughes and the said James Carroll acknowledged to me that he subscribed the name of Edward C. Hughes thereto as principal and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first in this certificate first above written.

[Official Seal]

L. MEININGER,
Notary Public.
R. DIXON,
Recorder.

March 17th, 1884. [567]

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District, as appears in Book 3 of Deeds, at page 10 to 11, and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 7. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [568]

**[Plaintiff's Exhibit No. 8—Deed—Murray to Griffin,
Dated June 30, 1894.]**

THIS INDENTURE, made the 30th day of June, A. D. One Thousand and eight hundred and ninety-four Between W. M. Murray of the City of Oakland, County of Alameda, State of California, the party of the first part; and Frank W. Griffin of the same place, the party of the second part, witnesseth:

That the said party of the first part for and in consideration of not only the natural love and affection which he bears to the said party of the second part but also the sum of Ten Dollars to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, conveyed, bargained and sold, remised, released and quitclaimed and by these presents does grant, convey, bargain and sell, remise, release and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all those pieces, parcels and tracts of land and real estate situate, lying and being in the Territory of Alaska, being the separate property of the said party of the first part, having been acquired by him long before his marriage to Mrs. S. E. Griffin, and more particularly bounded and described as follows, that is to say:

II.

All that certain town property situated in the city

of Juneau, in the Territory of Alaska, described and known as lot No. 3 in Block No. 2, the said lot having a water frontage of twenty-three (23) feet, and a depth of one hundred (100) feet, running back from the water front, and the Easterly boundary line thereof parallel with the side of a certain building which in A. D. 1884 stood on the said property; that said property being the same as that described in Book B of Deeds, at page 7, of the records of Harris Mining District, Territory of Alaska, and conveyed to the said party of the first part by William H. Newcomer, by deed bearing date the 14th day of May, A. D. 1884, and recorded in [569] Book B of deeds, page 26 of the records of said Harris Mining District.

Also that certain lot, piece or parcel of land in the City of Juneau, Territory of Alaska, described and known as Lot No. 1 in Block No. 4, having a frontage on Seward Street of one hundred (100) feet and a frontage of second street of fifty (50) feet; and the house thereon; the said house and lot having been conveyed to the said party of the first part by the said William H. Newcomer by the said deed of the 14th day of May, A. D. 1884, recorded in Book B of deeds at page 26, of the said Harris Mining District.

II.

All those certain town lots and pieces or parcels of land in the said city of Juneau, Territory of Alaska, described and known as lots two (2) and three (3) in Block ten (10) as numbered and laid out on the Hannus Plot of the said City of Juneau,

together with the houses and improvements on the said lots, the said houses and lots being the same houses and lots conveyed to the said party of the first part by Antone Marks by quit-claim deed bearing date the 6th day of September, A. D. 1884, and *recorded Book C of Deeds*, at Page 77, of the records of the said Harris Mining District.

III.

All that certain town lot, with the house and improvements thereon in the said City of Juneau, Territory of Alaska, more particularly bounded and described as follows, to-wit: Bounded on the East by N. Hilton's lot, on the south by the water front, on the West by P. Corcoran's lot, and on the North by Pollen's and Borun's lot, being the same lot, house or improvements, conveyed to the said party of the first part by N. A. Fuller by deed bearing date the 10th day of September, A. D. 1884, and recorded on page 86 of Book C of Deeds of the records of the said Harris Mining District. [570]

IV.

Also all those lots, pieces and parcels of land whatever their number and extent may be, with the houses and improvements of every kind whatsoever thereon, in the said city of Juneau, Territory of Alaska, and elsewhere which the late R. Dixon before his death conveyed to the said party of the first part.

V.

Also all share, right, title and interest of the party of the first part in or to the wharf and in or to all wharf rights on the water front of the said City of Juneau and in or to all rights, franchises and priv-

ileges appurtenant thereto; and also all that share and interest in the said wharf and wharf rights formerly owned by the later M. F. Griffin of the town of Weaverville, County of Trinity, State of California, having been acquired by him by deed from E. C. Hughes.

VI.

And also all other town lots and all mines and mining claims or locations, and all other real estate of whatsoever kind, nature or description, in the Territory of Alaska, or elsewhere, which the said party of the first part now owns or holds or which stands in his name, whether for himself or as trustee for others,

Together with all and singular the tenements and hereditaments and appurtenances, rights, privileges and franchises thereunto belonging or in anywise appertaining, and the reversions and reversions, remainder and remainders, rents, issues and profits thereof,

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of in or to the above-described premises and every part and parcel thereof with the appurtenances,

To have and to hold all and singular the above mentioned and [571] described premises with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In Witness Whereof, the party of the first part

has hereunto affixed his hand and seal the day and year first above written.

M. W. MURRY.

Signed, Sealed and Delivered in the Presence of:

M. E. GRIFFIN.

SARAH E. MURRY.

State of California,
County of Alameda,—ss.

This certifies that on this 30th day of June, A. D. 1894, before me the undersigned, a notary public in and for the said County and State, personally appeared the within named M. W. Murry, known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and Notarial Seal the day and year last above written.

MILTON BENEDICT,
Notary Public in and for Said Alameda County
State of California.

Filed for record at 11:30 o'clock A. M., Aug. 22,
1894.

H. W. MELLEN, D. R.

State of California,
County of Alameda,—ss.

I, James E. Crane, County Clerk of the County of Alameda, State of California, and clerk of the Superior Court of said county (which is a court of record), do hereby certify that Newton *Bennet*, whose name is subscribed to the certificate of proof of acknowledgment of the annexed instrument, and

therein written, was at the time of taking said proof or acknowledgment, a notary public in and for said county, duly commissioned and qualified and authorized by law to take the same; and full faith and credit are due to all his official acts as such notary public. And I do further certify that I am well [572] acquainted with the handwriting of the said notary public, and verily believe that the signature to said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged by M. W. Murry, according to the laws of the said State of California.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 2d day of October, A. D. 1894.

[Official Seal] JAMES E. CRANE,
County Clerk and Clerk of the Superior Court of
Alameda County.

This certificate filed for record at 11 o'clock A. M.,
Nov. 14th, 1894.

H. W. MELLEN,
D. R. J. R. D.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 10 of Deeds, at page 163 to 165 and of the whole thereof.

Dated July 22d, 1914.

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 8. Received in Evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [573]

[Plaintiff's Exhibit No. 9—Deed—Johnson et ux. to Carroll, Dated February 20, 1895.]

Know all men by these presents that we, C. S. Johnson and Mary D. Johnson, husband and wife, of Juneau, Alaska, in consideration of Fifteen Hundred Dollars to them in hand paid by James Carroll do hereby grant, bargain, sell, remise, release and forever quitclaim unto the said James Carroll and unto his heirs and assigns, all our right, title and interest in and to the following described parcel of land, situate in the town of Juneau, District of Alaska, to wit:

An undivided one-half part or interest in and to that certain piece or parcel of land, situate, lying and being in the East end of the town of Juneau, Alaska, and known as the Murry and Carroll or Juneau Wharf Co. Wharf premises; the same being six hundred feet square and running along the seashore of Gastineaux Channel, and more particularly described in the location certificate of said wharf premises recorded in Book "A" of Records on page 144 of the Records of Harris Mining District, Alaska, to which said record for greater certainty of description of said lands and premises reference is hereby made.

To Have and To Hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto

said James Carroll and to his heirs and assigns forever.

In Witness whereof, we have hereunto set our hands and seals this 20th day of February, A. D. 1895.

C. S. JOHNSON. (Seal)

MARY D. JOHNSON. (Seal)

Signed, sealed and delivered in the presence of:

F. D. KELSEY.

JOHN G. HEID.

United States of America,
District of Alaska,—ss.

This certifies that on this 20th day of February, A. D. 1895, [574] before me, the undersigned, a notary public in and for the said district personally appeared the within named C. S. Johnson and Mary D. Johnson who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

And Mary D. Johnson, wife of the said C. S. Johnson, on an examination made by me, separate and apart from her said husband, acknowledged to me that she executed the same, freely and voluntarily, and without fear, coercion or compulsion from anyone.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above named.

[Notarial Seal]

F. D. KELSEY,

Notary Public for Alaska.

Filed for record Feb. 19th, 1897—5 P. M.

H. W. MELLEN,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of deeds at page 63, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 9. Received in Evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [575]

[Plaintiff's Exhibit No. 10—Deed—Carroll et al. to Waterbury et al., Dated March 13, 1897.]

This Indenture, *made* this 13th day of March, 1897, between James Carroll and B. H. Carroll, his wife, and Ed. C. Hughes, of Juneau, Alaska, parties of the first part (the said Ed. C. Hughes being the same person referred to in the claim of title to the premises hereinafter described as C. E. Hughes and E. C. Hughes), and J. I. Waterbury of the City of New York, and T. Jefferson Coolidge, Jr., of Boston, Massachusetts, parties of the second part;

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Five Hundred Dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever quitclaim unto the said parties

of the second part and to their heirs and assigns, all the right, title and interest which the said parties of the first part now have or which they or either of them may hereafter acquire *of* in and to the following pieces, parcels or tracts of land, situate, lying and being in the District of Alaska, and in front of or near the front of the town of Juneau, Alaska, and upon Gastineaux Channel, the same being partly upland and partly tide land, and bounded and described as follows, to wit:

Beginning at corner number eight, survey number one, exterior boundary survey of the Townsite of Juneau, thence north fifty-seven degrees, four minutes east thirty feet, thence south thirty-one degrees, fifteen minutes East three hundred and twenty feet, thence along the northeast end *lumber* houses North Sixty-seven degrees, forty-five minutes East, One Hundred feet to the Southwest side of Decker Brothers wharf, thence along the dividing line between Decker Brother and Juneau City Wharf South fourteen degrees, no minutes East one hundred and twenty-eight feet, thence along the water edge, Juneau City Wharf [576] South seventy-five degrees, forty-five minutes west two hundred and seventy-two feet, thence along outer edge Juneau City Wharf North one degree thirty minutes west, One hundred sixty-eight feet, thence North seventy-five degrees, no minutes East thirty-three feet, thence North eight degrees forty-five minutes West Twenty feet, thence North twenty-nine degrees no minutes West one hundred and seventy-two feet, thence North forty-four degrees no minutes

west fifty feet. Thence along the northwest side Block F First Street, North forty-six degrees, no minutes East fifty feet to Main Street, thence South forty-four degrees, no minutes East along the Northeast side Block F Main Street 9.4 feet to the place of beginning. Courses expressed from the true meridian, magnetic variation thirty degrees, no minutes East of North (The Wharf known as "Juneau City Wharf" being situated upon the said described premises or some part thereof; also the following described piece, parcel or tract of land, situate, lying and being in the District of Alaska about one-eighth of a mile Easterly from the Town of Juneau, Alaska, upon Gastineaux Channel, and bounded and described as follows, to wit: the center line is marked by a blazed tree and notice, and large boulder near low-water mark in line south 25 degrees west; magnetic course and distances are as follows: Commencing at stake and mound of stone, 1st North 25 Degrees East 600 feet; Thence 2nd South 65 Degrees East 600 feet; Thence 3rd South 25 Degrees West 600 feet; to stake and mound of stone at low-water mark and thence 4th North 65 degrees West 600 feet along the water line to the place of beginning. The wharf known as the Murry and Carroll Wharf, or Carroll and Murry Wharf, being situated upon the said described premises or some part thereof. The intention being to convey to the said parties of the second part, all of the above-described premises and all the premises described in Volume A at page 27 of the records in the recorder's [577] Office for the Juneau Recording

District at Juneau, Alaska, also in Volume B of said records on page 224, also in Volume A of said records at page 144.

For a more particular illustration of all of the above and foregoing premises, reference is hereby made to the map or plat of said premises, which is hereto attached, marked "A" and made a part of this instrument, said property hereby conveyed being marked on said map or plat as "Juneau City Wharf" and "Carroll Murry Wharf," the said conveyed property being illustrated on said map or plat by the portions thereof colored in red.

Together with all and singular the appurtenances, wharves, buildings and superstructures there situate, and all and singular the possession possessory rights, riparian, littoral, and all water rights connected with said premises and appertaining thereto, with the right to build and construct wharves, warehouses, etc., over and across said premises, and to possess, own, use and occupy the same and all the riparian, littoral, water and other rights thereunto appertaining or belonging, as fully as are now owned or might or could be owned, used or possessed by said parties of the first part.

Together with all the rights of egress and ingress thereto now enjoyed, used or possessed by said parties of the first part.

To have and to hold all and singular all of the above-described premises together with the appurtenances to the said parties of the second part and to their heirs and assigns forever.

In witness whereof the said parties of the first

part have hereunto set their hands and seals the day and year first above written.

JAS. CARROLL. (Seal)

D. H. CARROLL. (Seal)

By JAMES CARROL. (Seal)

Her Attorney in Fact.

ED. C. HUGHES. (Seal)

By JAMES CARROL. (Seal)

His Attorney in Fact.

Signed, Sealed and Delivered in presence of:

S. H. PILES.

J. E. LILLY. [578]

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, James Carroll, to me known to be one of the individuals described in and who executed the foregoing instrument and who then and there acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this instrument first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, James Carroll, to me known

to be the attorney of fact of D. H. Carroll, one of the parties described in and who executed the foregoing instrument, and the said James Carroll, attorney in fact for the said D. H. Carroll then and there acknowledged to me that he executed the foregoing instrument freely and voluntarily as and for the act and deed of said D. H. Carroll for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and seal the day and year in this instrument first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, [579] James Carroll, to me known to be the attorney in fact of Ed. C. Hughes, one of the parties described in and who executed the foregoing instrument, and the said James Carroll, attorney in fact for the said Ed. C. Hughes, then and there acknowledged to me that he executed the foregoing instrument freely and voluntarily as and for the act and deed of said Ed. C. Hughes, for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand

and seal the day and year in this certificate first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Filed for record April 13, 1897, at 1 o'clock P. M.

JOHN Y. OSTRANDER,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of Deeds at page 198-199, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

District Recorder.

Plffs. Exhibit No. 10. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [580]

**[Plaintiff's Exhibit No. 11—Deed—Griffin et al. to
Waterbury et al., Dated March 30, 1897.]**

This Indenture made the 30th day of March, 1897, between Frank W. Griffin, of the City and County of San Francisco, State of California, an unmarried man, and Sarah E. Murray, of the same place, a widow, the parties of the first part, and J. I. Waterbury of the City of New York, and T. Jefferson Coolidge, Jr., of Boston, Massachusetts, parties of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of five

dollars (\$5.00) lawful money of the United States, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do by these presents remise, release and forever quitclaim unto the said parties of the second part their heirs and assigns, all of the right, title and interest which the said parties of the first part or either of them may have or may hereafter acquire in and to the following described real property situate lying and being in the District of Alaska, at the East End of the Town of Juneau, on Gastineaux Channel, and more particularly described as follows, to wit: The center line is marked by a blazed tree and notice and large boulder near low water mark in line South 25 degrees west. Magnetic course and distances are as follows: Commencing at a stake and mound of stone; first North 25 degrees East 600 feet; thence second, south 65 degrees east 600 feet; thence third, South 25 degrees west 600 feet to stake and mound of stone at low-water mark; and thence fourth, North 65 degrees West 600 feet along the water line to the place of beginning, which said described property was located March 6, 1881, by M. W. Murry, and is better known as the Carroll and Murry wharf property and premises and is better described in Book A of records, beginning at page 144 of the records of Harris Mining District, Alaska, in the office of the Recorder of said Mining District, in the said town of Juneau, and which record for greater certainty of description of said land reference is [581] hereby made; the property hereby conveyed being partly up-land, and

partly tide-land, and the wharf known as the Carroll and Murry Wharf being situated upon a portion thereof.

Together with all and singular the tenements, hereditaments and appurtenances, wharves, buildings, improvements and superstructures thereon situated and erected, and all and singular the possession possessory rights, riparian, littoral and water rights connected with said premises and appertaining thereto, with the right to build and construct wharves, warehouses, etc., over and across the said premises and to possess, own, use and occupy the same, and all the riparian and littoral rights thereunto appertaining as fully as are now owned or as might be owned, used or possessed by said parties of the first part, together with all the rights of egress and ingress thereto as now enjoyed used or possessed by the said parties of the first part.

To have and to hold, all and singular, the said premises together with the appurtenances, to said parties of the second part, their heirs and assigns forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FRANK W. GRIFFIN. (Seal)

SARAH E. MURRY. (Seal)

Signed, Sealed and Delivered in Presence of:

R. F. LEWIS.

M. E. GRIFFIN.

State of California,

City and County of San Francisco,—ss.

On this 20th day of March in the year One Thousand Eight Hundred and Ninety-seven (1897) before me, Mark Lane, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn personally appeared Frank W. Griffin (an unmarried man) and Sarah E. Murry (widow) known to me to be [582] the persons *who* names are subscribed to the within instrument, and acknowledged that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Notarial Seal]

MARK LANE,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

I, C. F. Curry, County Clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court thereof (which court is a court of record having a seal) do hereby certify, that Mark Lane, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and therein written was at the time of taking such proofs or acknowledgment a notary public in and for said county and city, duly commissioned and qualified and authorized by law to take the same, and full faith and credit are due to all

his official acts as such notary. And I do further certify that I am well acquainted with the hand writing of the said notary, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine and that said instrument is executed and acknowledged in accordance with the laws of the State of California.

In Witness Whereof I have hereunto set my hand and affixed the seal of the said Superior Court at my office in said city and county, this 20th day of March A. D. 1897.

[Superior Court Seal] C. F. CURRY,
County Clerk and Ex-officio Clerk of the Superior
Court. [583]

Filed for record April 13th, 1897, at 1 o'clock P. M.

JOHN Y. OSTRANDER,
District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of deeds at page 201-2, and of the whole thereof.

[Seal] JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 11. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [584]